ACTIVITIES OF FEDERAL LAW ENFORCEMENT AGENCIES TOWARD THE BRANCH DAVIDIANS (PART 2)

JOINT HEARINGS

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

AND THE

SUBCOMMITTEE ON
NATIONAL SECURITY, INTERNATIONAL
AFFAIRS, AND CRIMINAL JUSTICE

OF THE

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ACTIVITIES OF FEDERAL LAW ENFORCEMENT AGENCIES TOWARD THE BRANCH DAVIDIANS

(Part 2)

TUESDAY, JULY 25, 1995

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIONAL SECURITY, INTERNATIONAL AFFAIRS, AND CRIMINAL JUSTICE, COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT, JOINTLY WITH THE SUBCOMMITTEE ON CRIME, COMMITTEE ON THE JUDICIARY,

Washington, DC.

The subcommittees met, pursuant to notice, at 9:42 a.m., in room 2154, Rayburn House Office Building, Hon. William H. Zeliff, Jr. (chairman of the Subcommittee on National Security, International Affairs, and Criminal Justice) presiding and Hon. Bill McCollum (chairman of the Subcommittee on Crime).

Present from the Subcommittee on National Security, International Affairs, and Criminal Justice: Representatives William H. Zeliff, Jr., Robert L. Ehrlich, Jr., Steven Schiff, Ileana Ros-Lehtinen, John L. Mica, Peter Blute, Mark E. Souder, John B. Shadegg, Karen L. Thurman, Robert E. Wise, Jr., Gene Taylor, Tom Lantos, Louise McIntosh Slaughter, and Bill K. Brewster.

Present from the Subcommittee on Crime: Representatives Bill McCollum, Steven Schiff, Stephen E. Buyer, Howard Coble, Fred Heineman, Ed Bryant of Tennessee, Steve Chabot, Bob Barr, Charles E. Schumer, Robert C. Scott, Zoe Lofgren, Sheila Jackson Lee, and Melvin L. Watt.

Also present from the Committee on Government Reform and Oversight: Representatives William F. Clinger Jr., Cardiss Collins of Illinois, and Gene Green.

Also present from the Committee on the Judiciary: Representatives Henry J. Hyde and John Conyers, Jr.

Staff present from the Subcommittee on National Security, International Affairs, and Criminal Justice: Robert Charles, staff director and chief counsel; T. March Bell, counsel for justice affairs; Marshall Cobleigh, senior policy advisor; Michele Lang, special counsel; Sean Littlefield, special assistant and clerk; and L. Stephan Vincze, defense counsel; Committee on Government Reform and Oversight: Kevin Sabo, general counsel; Judith McCoy, chief clerk; Jeffrey Wilmot, professional staff member; Bud Myers, minority staff director; David Schooler, minority chief counsel; Ronald Stroman, minority deputy staff director; Donald Goldberg, minority assistant to counsel; Cherri Branson, minority professional

staff member; Ellen Rayner, minority chief clerk; Cecelia Morton, minority office manager; and Eddie Arnold, public affairs officer.

Staff present from the Subcommittee on Crime: Paul J. McNulty, chief counsel; Glenn R. Schmitt, counsel; Daniel J. Bryant, assistant counsel; and Audray L. Clement, clerk; Committee on the Judiciary: Alan F. Coffey, Jr., general counsel/staff director; Dan Freeman, parliamentarian; Julian Epstein, minority staff director; Perry Apelbaum, minority general counsel; Melanie Sloan, minority counsel; and Tom Diaz, minority counsel.

OPENING STATEMENT OF CHAIRMAN ZELIFF

Mr. ZELIFF. The joint oversight committees on Waco will now come to order.

Today will be a very interesting day, a long day. We have panels that will take us, I believe, late into the evening. We are hopeful that we can move forward, and I talked with my colleague, Bill McCollum, and rather than duplicating some of the material, he is going to talk in his opening statement about what we have learned so far, and I will quickly talk about where we are going.

From my point of view, as we reach this halfway point, we have been very committed to getting to the truth, to bringing out all the facts as to exactly what happened at Waco. We got off to a tough start in the beginning, but I think that we are really dealing with substance, and, again, we have learned about some important events.

Again, Bill will get into these in detail, but in Mr. Rodriguez's testimony yesterday, I think our hearts went out to him as he explained in great detail how he tried to warn people that the Davidians had been tipped off. We will hear more about that today. We also learned that David Koresh offered to have people come in and see the weapons. Again, these are the things that we really wanted to get to the bottom of. We now move into phase two; all the facts just mentioned, we will get into what happened during the 51 days that followed.

On March 1, 1993, the FBI took control, ATF was relieved of command, and the FBI and the Texas Rangers began what has come to be known now as the Waco siege. The FBI-controlled siege ended with CS gas and a fire that burns in many hearts and minds. That fire, which followed insertion of CS gas into the compound, led to 22 children and more than 60 men and women burning alive. In just 15 minutes the people who had been on the other end of the telephone were dead.

This week we will ask the Justice Department to answer tough questions about their role: What happened that caused this second tragedy? Who made the key decisions? Why were they made and on what information? And how can we prevent anything like this from ever happening again?

We will hear from scholars, lawyers, and eventually Janet Reno herself. Did the FBI's negotiators give up? Did internal tension at the FBI develop between the tactical people and the negotiators? Were offers of surrender made and rejected? Could the Texas Rangers have ended the siege or assisted in that end if given a chance? Was the crime scene evidence destroyed or tampered with in any way, any Waco documents? What were the roles of Mr. Potts, Mr.

Hubbell, the Attorney General, and the President of the United States? Did the President approve the use of CS gas? Did the Attorney General approve the use of CS gas? Who accelerated the use of CS gas? Why was it used in such great volume, and could that fire have been prevented?

Still as ATF Director Magaw said yesterday, and I just think after sitting here all day about 6 hours listening to him and Ron Noble, I can't help but feel good about his comments as he said that constitutional oversight hearings are good for law enforcement everywhere in this country; they are good for law enforcement on the local, State, and Federal levels; for one simple reason: They remind us all of the need for good plans, good procedures, and good, responsible practices.

Director Magaw, I believe, that you hit the nail on the head with that statement.

I would also like to say that every single one of us is committed to not only finding out what happened to those four brave ATF agents but also the men and women and children that also perished. We have a great respect for law and order, and I think anybody that makes any comments anywhere, any time, that goes against that is irresponsible.

Our commitment is getting at the truth. We have an oversight responsibility role, and that's exactly what we intend to do.

I would now like to yield to Mrs. Thurman from Florida for an opening statement.

Mrs. THURMAN. Thank you, Mr. Chairman.

Today we begin the next phase of our hearings. During the past 4 days we heard about the role of the ATF and the Department of Treasury in the planning of the fateful raid outside Waco on February 28, 1993. Four ATF agents were killed, 20 were wounded, and up to 5 Branch Davidians were also killed on that day.

Yesterday we listened to heart-wrenching testimony from Robert Rodriguez as he described his experiences inside the compound and his efforts to warn his superiors that Koresh knew agents would be coming. Robert watched helplessly from the perimeters while his fellow officers were cut down by automatic weapons fire. We were all touched by Mr. Rodriguez' account.

Yesterday we also heard from Agents Ballesteros and Williams, the men who attempted to serve the warrant to David Koresh. Mr. Williams and Mr. Ballesteros and every other single witness who was in Waco that day agreed that the Davidians opened fire first. This is an important fact that is now established.

It has also been firmly established that serious errors in judgment were made by ATF and other Treasury officials. As I stated yesterday in my opening statement, these mistakes are clearly outlined in the blue book. Once again, I have heard nothing up to this point that leads me to believe that there was any attempt to whitewash or cover up the facts in this case.

Mr. Chairman, yesterday we also took testimony from Secretary for Law Enforcement Ron Noble and ATF Director John Magaw. I was encouraged to hear from both these gentlemen of the sweeping changes that were made in both their agencies. Secretary Noble stated that he issued a directive in August 1993, that requires the Treasury Office of Enforcement to be notified of any significant

operational manners that included the Department's bureaus. In addition, Secretary Noble outlined the steps he had taken to improve general oversight within the Department.

Director Magaw also talked about changes made at ATF. Among the changes are increased and accurate intelligence; crisis management training for all ATF staff; and, finally, a new ATF order that outlines undercover guidelines.

I was encouraged by both Secretary Noble and Director Magaw in response to my question about Americans's constitutional rights. Both men said it was important for every one of their employees, from management to field agents, to be acutely aware of citizens' rights under our Constitution.

Today, we start our inquiry into the role of the FBI and the Department of Justice in the 51-day standoff that followed the February 28 raid. We will specifically be looking into the negotiations and the role of the FBI. We will undoubtedly hear testimony from some of today's witnesses that the FBI did not fully pursue negotiations.

However, I believe that the testimony of Ms. Jewell, Joyce Sparks, and Robert Rodriguez all established clearly that Koresh was never going to leave the compound. In order to fulfill his prophecy, Koresh needed to create his own Armageddon. By surrendering, he would have been proven a false prophet to his followers. This fact is also now firmly established in the hearing record and I hope will be further examined during today's testimony.

Another important point is that after the death and wounding of both ATF agents and Branch Davidians, a slow and careful process was employed by the FBI to negotiate a peaceful end to the gun battle. Let us not forget that the FBI maintained its channels to Koresh for 51 days. Some will say that Koresh constantly lied and kept looking for opportunities to spread his views.

As we will hear, David Koresh always had another reason not to surrender, another condition, another demand, another chance to manipulate. After nearly 2 months of this posturing, it became apparent that Koresh was not leaving the compound under his own accord. There was no evidence that he would have relinquished the national spotlight which he exploited for 51 long days. We would have continued to evade the real issue. He had answered a warrant with gunfire that killed four law enforcement officers.

In closing, Mr. Chairman, let me state again as we enter this phase of the hearing that all I seek is the facts and make sure an event like this never happens again.

Thank you, Mr. Chairman, and I yield back the balance of my time.

Mr. ZELIFF. Thank you, Mrs. Thurman.

The Chair recognizes and introduces the cochairman of the joint subcommittees and chairman of the Judiciary Committee's Crime Subcommittee, a good friend, Bill McCollum from Florida.

OPENING STATEMENT OF CHAIRMAN McCOLLUM

Mr. MCCOLLUM. Thank you, Mr. Zeliff. I appreciate that introduction.

On the fifth day, as we begin to look for the first time at the Federal Bureau of Investigation's role in this process and what happened on the fatal last day after 51 days of siege, I think it's appropriate for us to very briefly look back on what we have just witnessed, particularly what we heard yesterday, because yesterday was a very fruitful hearing as far as I was concerned. I think both sets of them were in trying to put in perspective what happened on February 28, and why it happened.

First of all, I think there were two very significant points that were discovered yesterday which I certainly had not been aware of and I don't believe were in anybody's report or investigation in the kind of decisive manner we learned them yesterday.

One of those is that the ATF did not have the capability to conduct a siege. They didn't have the experience or the negotiators to actually do that. In the discussions yesterday evening with Mr. Noble, we learned that, we had documentation of that, and we found out that for a fact, and that was a factor, a very serious and significant factor, leading to the decision ultimately to do the dynamic entry that led to the tragic deaths that we know about on February 28.

The second thing that I think we learned yesterday that was very important—and we have been building up to it with a lot of questions on the days before but really hadn't quite gotten to the point of getting the admissions that came out yesterday—was that the ATF actually abandoned the idea of trying to arrest David Koresh outside the compound some 10 days or 2 weeks or maybe longer before the February 28 raid.

In other words, they weren't looking to try to cut the head of the snake off, as somebody said, and try then to do whatever they needed to do to go in and search the compound. They had completely abandoned that idea.

Now those two things are important for a few reasons, and I want to outline them, and, in doing that, I would like to make the observation—at least it's my observation—that this is a case where there is plenty of blame to go around. There is not one single thing that caused the problems that occurred on the day of this raid, on February 28.

There was a lot of emotion out here yesterday, a lot of finger pointing, understandably, a lot of conscience being brought forward. Let's run through a few of those things.

First of all, clearly if this element of surprise or the point of secrecy had not been lost, this raid might have been successful. The agents all expressed that. So the loss of secrecy, the loss of surprise, certainly contributed to the failure of the raid on the 28th. The "but for" concept, but for the loss of surprise, there might not have been the tragedy that there was.

But in addition to that, we can say that but for the fact that the raid planners did not know or listen to Joyce Sparks or anyone else with the expertise on the religious nature and the real meaning of what David Koresh was trying to say, but for the failure to listen to their warnings about not going in directly as they did but instead trying to arrest him outside the compound, maybe this would not have happened.

In addition, one can say but for the fact that David Koresh was not arrested, but for the fact that the ATF abandoned the idea of arresting him outside the compound and separating him from those inside, this tragedy might not have happened.

Another "but for" comes with the question of the press involvement. I don't think there was any stronger words yesterday than Mr. Hartnett condemning the cameramen and the press for getting involved as aggressively as they did and blowing the cover.

I don't know to what degree ATF's involvement with the newspaper and some of the other activities about the press led to this hype or led to the fact that cameramen were on the road, but obviously the press was overly aggressive and obviously the cameramen blew the cover of this raid to the postman who went in and who was a member of the Davidians and told Koresh about the folks who were coming that morning.

So we can say but for the cameramen and but for the overzealous press, this tragedy might not have occurred.

Then one has to ask himself, despite Mr. Noble's trying to find a way to excuse it last night, if Secretary Bentsen, when he first took over as Secretary of the Treasury, had done what one would normally expect a Secretary to do in the first 30 days he's in office—which is to meet with the heads of his law enforcement agencies such as the ATF—if Secretary Bentsen had just met with Mr. Higgins and had an ordinary conversation in which he asked him what are the significant items on your plate right now, which I suspect he would have asked—well, maybe, just maybe, just maybe, then the facts would have come over about the fact that this Waco raid was going to take place or something was going to happen down there, and the Treasury Department would have investigated it in a much more thorough manner instead of learning about it 48 hours before, and maybe this entire tragedy would not have happened.

Then we have the report, the Treasury report. I would suggest that we learned that it is a reasonably good report, or it was a reasonably good report, but it was not the terrific all-perfect report that some would like to have you believe. We learned a lot of new information, and we did place some of the things in the record yesterday that clearly were not in that report.

What bothered me the most about all of that, though, was the fact that it appears that Mr. Noble and some others down at Treasury did attempt to distance themselves from the events of Waco, to try to quickly assess the blame and place it on the ATF agents on the line and make them the fall guys; and, yes, there was some blame there to be placed, and there is nothing necessarily wrong with the placing of the blame, but the manner in which it was done and the callousness with which it was done seems to me to be somewhat striking at times and one of the ways I want to point out this element of surprise question.

After I questioned Mr. Noble yesterday extensively, and listening to all of the other witnesses leading up to this question about what was it all about, it was very clear—he admitted it—that at no time did the Treasury Department direct anybody at the ATF to abandon the raid if the element of surprise was lost.

Now they did think they had assurances that this raid would not take place if everything didn't go right, and Mr. Higgins was confident that it wouldn't have occurred had the agents in the field done what normally you would expect them to do and not go forward if surprise was lost and they learned about it.

But, nonetheless, Mr. Noble went ahead and did things that not only in the report were suggestive of the fact that Treasury directed this to happen, and it didn't happen, and therefore this was the real problem in this raid, but also on "60 Minutes" on May 14, 1995, he said—and I quote—"What was absolutely clear in Washington at Treasury and in Washington at ATF was that no raid should proceed once the element of surprise was lost. Then the raid planners would have said, okay, we can't go forward with the raid."

That's what should have happened, that's what the raid planners were trying to do, that's what they were directed to do, and they didn't do it.

Now, that simply wasn't so, and Mr. Noble stretched that point, I wouldn't say trying to tell a lie about it, but I would say it was all part of the mental attitude down at Treasury at that point to distance themselves and make sure they didn't take any of the blame for this. They were new in office; they attempted very hard to put distance between themselves and those who were at fault. That's what I got out of yesterday's hearings, Mr. Chairman.

I think we now need to put that aside. We will come back to it in our final report of the committee at the end after we have finished all of this work, and we are today, as you've indicated, going to proceed to focus on the second half of this, the 51-day siege and what happened that led up to the final tragedy at Waco in April.

Thank you.

Mr. ZELIFF. Thank you, Mr. McCollum.

The Chair now recognizes the ranking minority member of the Crime Subcommittee, Chuck Schumer from New York.

Mr. SCHUMER. Thank you, Mr. Zeliff.

First let me say I thought yesterday's hearing represented both the best and the worst of what could be and what could come out of these types of hearings. The best was, I think, hearing Mr. Rodriguez tell what happened and hearing the rebuttal from the other witnesses. It came out clearly.

There was a dispute as to what happened, but everyone could make their own judgment, and I think that that is very, very important because, as I said in yesterday morning's opening statement, losing the element of surprise and then going ahead with the raid was the greatest, greatest mistake that occurred in the whole Waco tragedy.

The worst is sort of idle throwing out of words with very little proof, the word "coverup" yesterday. Coverup is a serious word, it implies a crime, and Mr. Hartnett threw it out; a few members of the—a few members of this committee latched on to it, but there was not a single bit of proof of coverup, and that is the kind of thing, in my judgment, that poisons these hearings.

Getting at the truth, great; we should, even if the truth has already come out; but just throwing around words that really have no basis in fact and that are very serious words, that is a danger

of this hearing. It has been a danger throughout. We in the minority have tried to limit that danger, and I hope it will be continued.

In this regard, I do want to praise my colleague, Mr. McCollum, who last night—most of you were gone—said that he agreed that there was no real proof of coverup, and in fact even today in the Washington Times—hardly a fan of the Government's position—they said that the hearing produced, quote, "no proof that Chojnacki's and Sarabyn's reinstatement was inspired by a coverup."

I think all of us have a responsibility to make sure that when we throw around these words that there be some backing, for the very reason that there are a few in the extreme of America who want to believe the worst, and saying things to them in a national audience that are not backed up play into what I would consider paranoid fears.

Finally, I would say that, again, yesterday's hearing was dramatic, it served a purpose, but let's not forget and let's not get away from the fact, all the major facts, Mr. Rodriguez' testimony, Mr. Sarabyn and Mr. Chojnacki's response, were already in the public record.

I stand by my statement that nothing very materially new came out. Even the thing mentioned by Mr. McCollum that ATF gave up on the idea of serving Koresh; he is right, but it was criticized. ATF was criticized in the very report for that, in the blue book which I think is a—it's not a 100-percent accurate document, but it's a darned good job.

The next point I would like to make is about Tuesday-morning quarterbacking, and this relates to the next phase of the hearings. It's going to be very easy for every one of us in hindsight to say this was done wrong, that was done wrong, and today, for instance, we are going to hear from a lot of Tuesday-morning quarterbacks. We are going to hear from critics, volunteers, amateurs, who have had no experience in negotiating with a heavily armed cult. We are going to hear from those who bore no responsibility then or now for ever taking action, and even we are going to hear from some who have conflicts of interest, lawyers and lawsuits who benefit from positions against the Government, and we ought to be careful.

Just remember this, ladies and gentlemen, we were dealing with someone who had an apocalyptic vision. Take the hypothetical that Janet Reno waited more than the 51 days and on day 57 Koresh, through some maddening view of his own, set fire to the compound while the FBI agents had still surrounded it. Guess what would be happening? Everyone would be criticizing Janet Reno for being indecisive and for not taking action.

Monday-morning or Tuesday-morning or any-morning quarterbacking is easy, but we must remember that it is difficult to do and, furthermore, that we had an armed group of people led by someone who was a child molester, led by someone who violated, violated, laws.

Another argument that will come up today is about limits to tolerance. Well, we are going to hear a lot of academic lectures about how we should be tolerant of new religious sects. I firmly believe in that. I believe in faith. I respect faith. I have faith myself.

I was the author of the Religious Freedom Restoration Act which expanded the bounds of what religions could permissibly do in America no matter what the Government said. In fact, myself and Chris Cox joined in that crusade with Senators Kennedy and Orrin Hatch and passed the law last year, but, folks, there are limits to tolerance. Sexual perversion, the rape of small children, the hoarding of large amounts of weapons, is not excused by any religion and by any Bible.

Finally, let's keep up doing something. I have detected a change in the tone of these hearings from my friends on the majority side. The first few days there was much more bashing of law enforcement than there is today. I believe nervous—let the record show nervous and defensive laughter.

Mr. ZELIFF. Not in your wildest dreams, Mr. Schumer.

Mr. SCHUMER. In any case, let us keep remembering—let us keep remembering the brave men and women of law enforcement who were under significant, significant strain and stress. They are not our enemies. The ATF was not our enemy; the FBI is not our enemy. If they made mistakes, let's correct them, but let us not weaken them, let us not bash them, let us not pick apart every single little immaterial decision that they made in an effort to bring those proud and brave agencies down.

Thank you, Mr. Chairman.

Mr. MCCOLLUM. Mr. Chairman, may I make a unanimous consent request?

Mr. ZELIFF. Yes.

Mr. MCCOLLUM. I would like to ask unanimous consent that the interview transcript of Ron Noble of CBS on "60 Minutes," May 14, 1995, be entered in the record.

Mr. ZELIFF. Without objection, so ordered.

[The transcript follows:]

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60 Minutes
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Sunday, May 14, 1995

Profile: What really happened?; bombing of federal building in Oklahoma City draws attention to government siege of Branch Davidian compound in Waco, Texas

WHAT REALLY HAPPENED?

LESLEY STAHL, co-host:

The bombing of the federal building in Oklahoma City has once again focused attention on another tragedy--the government siege two years ago of the Branch Davidian compound in Waco, Texas. That's because Oklahoma City was apparently someone's warped act of revenge for what the federal government did in Waco. What really did happen between David Koresh, his followers and the federal government? And why do so many people believe that the government's actions at Waco were evil?

(Footage of Branch Davidian compound burning)

STAHL: (Voiceover) If you're tempted to think that the only people charging the government with mistakes or misconduct at Waco are the militiamen and the survivalists, think again.

Dr. ALAN STONE (Professor of Psychiatry and Law; Harvard University): There was incredible stupidity, incompetence and provocation by a reckless and overreaching federal agency.

(Footage of Stone; ATF police breaking out window)

STAHL: (Voiceover) Dr. Alan Stone is a professor of psychiatry and law at Harvard University. After Waco, the Justice Department called him in to help evaluate the disaster. He gave the government a failing grade right from day one. The first failure: the raid by Bureau of Alcohol, Tobacco and Firearms agents in search of illegal weapons.

Dr. STONE: And they had a very complicated, cockamamy plan that was crazy, and they knew that this place was filled with women and children. And yet they were prepared to go in with their own automatic weapons and--and--for what they called a dynamic entry.

(Footage of dead agents being carried out of compound; helicopter; Branch Davidian compound burning; Janet Reno)

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STAHL: (Voiceover) A dynamic entry that went tragically wrong. It ended with four BATF agents and five Branch Davidians dead. The armed standoff that followed lasted 51 days. It ended on April 19th, 1993, with an inferno that killed Koresh and more than 70 followers, including 25 children. That afternoon, a brand-new attorney general faced the press.

Ms. JANET RENO (United States Attorney General): (From file footage) I made the decision. I'm accountable. The buck stops with me.

(Footage of Stahl and Reno)

STAHL: (Voiceover) This week, we talked with Attorney General Janet Reno about her decisions that ended the standoff with David Koresh. But first a look at how and why it all started.

(Footage of peaceful Branch Davidian complex; warrant; David Koresh; **Ron Noble**)

STAHL: (Voiceover) The Waco story began in February 1993 when the BATF obtained a warrant to search the Branch Davidian compound and arrest David Koresh on charges of stockpiling illegal weapons. **Ron Noble** was and still is the Treasury Department official who oversees the BATF.

Now what do you say to those people who argue that--that our government has no business going in after a religious group?

Mr. **RON NOBLE** (Treasury Department Official): This was not a religious group. This was a group of criminals engaged in serious violations of federal criminal law. For example, they were manufacturing machine guns, not making Bibles. They were manufacturing gerades--grenades. And why? To use them against law enforcement officers.

STAHL: And you have absolute, indisputable evidence that that's what they did?

Mr. NOBLE: Following the burning of the compound on April 19th, investigators went to the compound to retrieve what was left, and they recovered...

(Footage of weapons seized)

Mr. NOBLE: (Voiceover) ...46 machine guns, multiple hand grenades, over 2.1 million rounds of ammunition.

Dr. STONE: (Voiceover) There's reason to accept that there were

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lots of guns there. There were grenades there.

I accept all that. What I don't accept is that justifies a raid--the largest raid in the history of the BATF with 80 agents from different parts of the country brought together who weren't trained, who were incompetent, with a plan that wasn't even written down anywhere.

STAHL: Did you have reservations about the whole idea of going forward with all these agents in--in hoods and guns and what they call a 'dynamic entry approach'?

Mr. NOBLE: We had a group that had amassed hundreds of weapons that had talked about causing harm in the local community. Now how do you address that? One is you could simply arrest Koresh away from the compound as opposed to executing a raid. In fact--in fact, it turns out that Koresh rarely was away from the compound.

STAHL: You say he didn't leave the compound. Newt Gingrich, the speaker of the House, just this week said...

Representative NEWT GINGRICH (Speaker of the House): (From "Meet the Press") Here was a guy who--who ran every Sunday--every Saturday morning, the head of the--of the group in Waco, and who stopped for ice cream every Saturday morning. And with reasonable intelligence, you could simply have had six agents at the ice cream store.

Mr. NOBLE: With all due respect to Mr. Gingrich, he doesn't know what he's talking about. Koresh did not leave the compound every Sunday to get ice cream. Koresh had no regular pattern of leaving the compound. I'm telling you that what you've heard over and over again...

STAHL: That he left all the time.

Mr. NOBLE: ...is false. It's absolutely false.

(Footage of Branch Davidian compound; BATF agents)

STAHL: (Voiceover) There is one thing about Waco on which everyone agrees: The morning of the raid, David Koresh found out 40 minutes ahead of time that the BATF was coming, and the agents in charge had explicit instructions on what to do if that happened.

Mr. NOBLE: What was absolutely clear in Washington at Treasury and in Washington at ATF was that no raid should proceed once the element of surprise was lost. Then the raid planners would have said, 'OK, we can't go forward with the raid.' That's what should have happened. That's what the raid planners were trained to do.

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That's what they were directed to do, and they didn't do it. That is a mistake. It was a mistake that has cost the lives of four Treasury agents.

(Footage of government report entitled, 'Investigation of Vernon Wayne Howell')

STAHL: (Voiceover) The Treasury Department's 1993 report on Waco made that same point, so the conspiracy theorists who say our government has never admitted mistakes are just wrong.

Mr. DAVID KORESH (Branch Davidian Leader): (From file footage) His tongue is the pen of a...

Group of Students: (In unison) (From file footage) ...ready writer.

Mr. KORESH: (From file footage) So how's God going to talk to...

(Footage of Koresh; exchange of gunfire between an agent on roof and someone inside building)

STAHL: (Voiceover) Still, the report insists that David Koresh is the only one to blame because he ordered an ambush of federal agents. Who ambushed whom remains a point of contention. This 911 call from inside the compound that day sounds as though the Branch Davidians felt they were being ambushed.

Unidentified Man #1: (From 911 call) Tell them there are children and women in here and to call it off!

(Footage of Waco siege)

STAHL: (Voiceover) When they finally did call it off after an hour's gunfight, more than 100 Branch Davidians were barricaded in their compound and the FBI was ordered to take over from the BATF to try to coax them out. Their orders, right from the president, were to do whatever it took to end it peacefully.

(Footage of Dean Kelley; of First Things, with cover story 'Waco: The Massacre, the Aftermath')

STAHL: (Voiceover) Dean Kelley, the National Council of Churches' expert on religious freedom, has written a new report on the standoff.

There were negotiations with David Koresh day in and day out.

Mr. DEAN KELLEY (National Council of Churches): That's right.

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STAHL: Talked about Scripture over the telephone, right?

Mr. KELLEY: For hours.

STAHL: Basic--for hours, basically, driving the agents crazy.

Mr. KELLEY: Yep.

STAHL: Is this--is this a fair description?

Mr. KELLEY: He was using a vocabulary that they did not understand. They were thumbing frantically through their Gideon Bible trying to keep up, and it was bewildering.

Mr. KORESH: (From file footage) ...according to the book.

(Footage of Koresh)

STAHL: (Voiceover) Bewildering because the FBI knew a lot about rescuing hostages, but not much about reasoning with an end-of-the-world preacher whose followers thought he was the Messiah.

Mr. KORESH: (From file footage) What's he going to preach?

Group of Students: (From file footage) Righteous...

Mr. KELLEY: Messing with that is like sticking your finger in a dynamo, and people didn't seem to grasp that. And that is entirely different from what the FBI thought they were getting into, which was a hostage situation.

(Footage of Branch Davidian)

STAHL: (Voiceover) In fact, the FBI flew in its hostage rescue team. Problem was these hostages didn't want to be rescued, so the FBI tried tightening the noose on Koresh using psychological warfare, bright lights and loud music.

All the while, there was a standoff within the FBI itself between its own psychiatrists, who were warning that those tactics could well backfire, and the tactical officers, who wanted to show Koresh who was boss.

Dr. STONE: Their own experts had told them, 'You should back off. If you try to to push him, it will precipitate mass suicide.' And he...

STAHL: They were told that ahead of time?

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Dr. STONE: That--and I--this is not a case of a smart-aleck Harvard professor with the wisdom of retrospect telling people what to do. Everything I am saying to you are things that their own experts told them.

(Footage of Reno; Branch Davidian siege)

STAHL: (Voiceover) Janet Reno was confirmed as the new attorney general after the siege began. As it moved into its seventh week, top FBI officials chose the get-tough approach and leaned on her to go along.

Wasn't there kind of an internal war going on between the behavioral experts...

Ms. RENO: W...

STAHL: ...or some of them?

Ms. RENO: The information that was provided to me is there may have been disagreements with how they negotiated as they went along, but at that point, the experts were telling me, 'Negotiation is not going to get him to come out voluntarily.'

(Footage of Branch Davidian complex)

STAHL: (Voiceover) The FBI first asked Reno to approve a tear-gas attack on April 12th, then again on the 14th, and again on the 16th. She kept resisting.

Ms. RENO: I wanted to find out: Could we exhaust their food supply? Could we exhaust their water supply? We investigated that, looked at that. I tried to think of every alternative. I--could we tunnel under? With the explosives in the building, that wasn't a reasonable alternative. They told me that the conditions were deteriorating inside. I was concerned about the safety of the people inside. The behavioral experts were telling me that children--for a siege that could last a year--it would have a lasting impact on them.

(Footage of Branch Davidian siege)

STAHL: (Voiceover) Reno finally gave the FBI the go-ahead, so at dawn on April 19th, they began pumping a type of tear gas called CS gas into the compound.

People we've spoken to lately--experts say that CS gas was very toxic for small children.

Ms. RENO: That was one of the first questions that I asked--'If

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you gas it, what about the children?' That's when I--the FBI made arrangements for me to meet with Dr. Harry Salem, who is a civilian PhD working for the United States Army. His judgment was that it would not be permanently injurious to children.

Dr. STONE: Look, I've done my own computer search. I found a case history of a a child who was in a building where they used CS gas and they didn't know the child was there, and the child spent 28 days in intensive care and almost died.

Ms. RENO: Dr. Stone is a psychiatrist, and I have a great regard for him, but wh--what is important is that he is not a toxicologist. Best information I have, even at this point, is that it would not be injurious.

(Footage of Branch Davidian compound; compound burning)

STAHL: (Voiceover) There's no way of knowing now just how the gas affected the 25 Branch Davidian children because just after noon on the 19th of April, says Janet Reno, Koresh started the fire that quickly consumed everyone inside, including all those children and Koresh himself. And that is the one thing on which Janet Reno and Alan Stone agree.

Dr. STONE: He decided to use the one kind of control he could still have and tell everyone to commit suicide, and--and I think he did that.

STAHL: You do?

Dr. STONE: Oh, yes.

STAHL: You--do you think he started the fires?

Dr. STONE: I do, yes.

(Footage of compound ruins; Waco report; Larry Potts)

STAHL: (Voiceover) After the deadly end to the Waco siege, Reno ordered an internal investigation which took six months and produced a three-volume, 1,000-page report. It concluded, basically, that everyone in the government had done a pretty good job. Not only that, Larry Potts, one of the FBI officials in charge of Waco, just got a promotion. He's now the number-two man in the entire bureau.

And the Justice Department report--The New York Times called it a 'whitewash.' How come, with--with the fact that so many people died, not one person in the FBI or the Justice Department was--was ever blamed for anything?

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Ms. RENO: People should get blamed if they did something wrong.

STAHL: You wouldn't even be willing to say there were examples of human error in judgment?

Ms. RENO: To blame the FBI for what David Koresh did just isn't logical.

(Footage of ATF agents)

STAHL: (Voiceover) Back at the BATF, the two on-scene commanders who bungled the initial raid were supposed to have been fired. But when they appealed, they were reinstated to desk jobs with back pay. All of this continues to fuel the suspicion.

Mr. NOBLE: There are people, I believe, who we'll never be able to persuade that there's been a full accounting. And that's what's most upsetting about this to me is that people are repeating false statements about what happened, and they're taking those false statements and they're turning Koresh--this person who ordered the killing of ATF agents, this person who torched and set fire to the compound--and they're making a hero out of him. On the other hand, they're trying to demonize federal agents who are executing warrants lawfully. That's what's upsetting.

STAHL: Well, if the militias call him a hero, what do you call him?

Mr. NOBLE: I call David Koresh a cold-blooded killer.

STAHL: Knowing that David Koresh believed that the end of the world was coming, having your own experts say that he could trigger a mass suicide, would you be willing to say that the government bears some responsibility for pushing him to that end?

Ms. RENO: I have thought about this almost every single day since April the 19th, 1993. It's the single hardest decision that I've ever made in my life. The FBI stood back; tried to resolve the situation over 51 days. The whole effort by the FBI was to save human life.

STAHL: Now it's two years later. Do you still feel the same way?

Ms. RENO: Obviously, I saw what happened, and knowing what happened, I wouldn't do it again. I'd say, 'No, this is going to happen. We're not going to do that. Our whole purpose is to save human life.'
Program Time: 7:00-8:00 PM

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Mr. ZELIFF. We have today a special opportunity to hear some new, additional information, and I would like to introduce the panel.

Dick DeGuerin is a widely recognized defense attorney in the State of Texas. He represented David Koresh and entered the compound during the siege.

I would like to also introduce Mr. Jack Zimmermann, also a well known and respected attorney, who happens to be a new grandfather within the last few hours.

We appreciate your being here. You represented Steve Schneider.

He also gathered firsthand evidence upon entering the compound during the siege. In addition to being a defense attorney, Mr. Zimmermann is a colonel in the U.S. Marine Corps Reserve. He practices as a military judge.

Two very credible witnesses: Welcome. If you would please stand and take the oath.

[Witnesses sworn.]

Mr. ZELIFF. Please be seated.

Ms. JACKSON LEE. Mr. Chairman.

Mr. ZELIFF. Let the record show that both answers were in the affirmative.

Yes.

Ms. JACKSON LEE. Mr. Chairman, just a moment of personal privilege. I am from Houston, and I simply would like to greet these two very fine attorneys and fine constituents and appreciate their public service as well. I know both gentlemen, Mr. DeGuerin and Mr. Zimmermann, who have given of their time to the less fortunate, who have been stellar members of the Texas Bar Association and additional bar associations throughout the Nation, and I am just very, very proud to have them here and have them as Americans and have them as Texans and have them as Houstonians.

I welcome you.

Mr. ZELIFF. Thank you, Ms. Jackson Lee. I appreciate it.

I also note that their families are sitting behind them, and we welcome all of you.

For the first question the Chair would like to recognize the chairman of the full Committee on Government Reform and Oversight, Mr. Bill Clinger from Pennsylvania.

Mr. CLINGER. Thank you, Mr. Chairman.

Before I yield to the gentleman from Maryland, I would just note that the gentleman from New York indicated that he sensed a change of tone on this side of the aisle. Might I say that I have recognized a similar change of tone on the other side of aisle.

I do recall at the beginning of these hearings the gentleman from New York indicated that he thought that there was no purpose to these hearings, that they were redundant and perhaps politically motivated. I was pleased to hear him say that he feels a useful purpose is being served by these hearings, with which I totally agree.

At this point I would then like to yield the rest of my time to the gentleman from Maryland, Mr. Ehrlich.

Mr. EHRLICH. Thank you.

Welcome to Washington, in more ways than one, right?

Mr. Zimmermann, by way of introduction, I have a question for you. By way of introduction, sitting here for the first 4 days, particularly with respect to yesterday's testimony, I am fairly satisfied that a lot of the procedures, a lot of the personnel, a lot of the mindset that ATF had prior to Waco, is no longer in place, and that has been a very positive aspect of these hearings.

To me, one of the most disturbing findings or pieces of evidence that we have uncovered so far was a series of memos that Mr. Barr brought forth I believe last Friday.

Now, sir, you are certainly not an amateur when it comes to criminal law, are you?

STATEMENT OF JACK ZIMMERMANN, ATTORNEY FOR STEVE SCHNEIDER

Mr. ZIMMERMANN. No, sir.

Mr. EHRLICH. In fact, you are a professor of law.

Mr. ZIMMERMANN. I am board certified in criminal law by the State and national boards.

Mr. EHRLICH. Sir, you are also, I believe, a Reserve Marine colonel.

Mr. ZIMMERMANN. I just retired. Yes, I was a colonel in the Marine Corps; yes.

Mr. EHRLICH. You have sat as a military judge.

Mr. ZIMMERMANN. That is correct. That was my last assignment.

Mr. EHRLICH. Sir, are you familiar with the material that was produced last Friday with respect to a series of memos emanating from the Department of Justice to Treasury, the topic of which, generalizing, was a directive to Treasury to cease investigation into various aspects of the Waco incident because Brady-type material had or could be produced. Are you familiar with those memos, sir?

Mr. ZIMMERMANN. Generally, yes, sir.

Mr. EHRLICH. Now, sir—and I think Mr. Noble's testimony yesterday was quite illuminating, because we are not talking about the shooting investigation that ATF had conducted, we are talking about a directive simply from Justice to Treasury; and, sir, my question to you is—and this goes far beyond these hearings, in my view—do you have a professional opinion, sir, with respect to the appropriateness of those memos and those directives?

Mr. ZIMMERMANN. Yes, sir, I do.

Mr. EHRLICH. Could you please provide these committees and the American public with your opinion?

Mr. ZIMMERMANN. As I understood the rationale.

Mr. ZELIFF. Mr. Zimmermann, could you bring that mike up closer to you.

Mr. ZIMMERMANN. Yes, sir. How is that?

If there is a specific part of any particular memo, it might make more sense if I would have it in front of me. But in general, as I understood what happened, was, the rationale given for those directives was to prevent simultaneous investigations. I think that's what it was.

Mr. EHRLICH. That has been the testimony.

Mr. ZIMMERMANN. In general, if an investigation were going forward and being done correctly, it probably would not be necessary to do two, and one might get in the way of the other.

But that's not what I understood the purpose stated in the memos was. As I understood, it said that the memos were revealing, that the evidence was not hanging together and not fitting together, and that it was creating Brady material that would have to be turned over to the defense.

Mr. EHRLICH. Now, sir, the phrase "Brady material" has been thrown around these hearings. Would you please give a definition that the American public can understand?

Mr. ZIMMERMANN. Yes, sir. There is—the Supreme Court of the United States has established a constitutional rule that if there is evidence that would either go to exculpate or show the innocence of an accused person or would lessen the punishment if convicted, and the prosecution has that evidence, that must be provided to the defense so the fact finder, the jury or the judge, would be aware of it.

Mr. EHRLICH. Sir, in reality it creates an affirmative duty on the part of the Government to produce exculpatory material. Is that correct?

Mr. ZIMMERMANN. That's correct both in State and Federal prosecutions, and my understanding was from those memos—is that the concern was not that there not be two simultaneous investigations that might be stepping on each other in going in different directions, but instead the purpose of stopping the second investigation, if you will, was because it was producing conflicting, exculpatory type of material that, under the rules, would have to be turned over to the defense.

Mr. EHRLICH. Sir, is it your testimony that such memos directly contradict the law that Brady dictates?

Mr. ZIMMERMANN. If, as a result of those memos, exculpatory evidence was not turned over to the defense, I think whoever was on trial in that particular case, this or some other case, would probably, if that could be proven to have been material evidence that would have affected the outcome of the trial, would probably result in new trials for the people who were wrongly convicted.

Mr. EHRLICH. Thank you, sir.

Mr. Zimmermann, also let me direct you to the events surrounding the incident. I know you certainly—you have a lot of the information. Could you describe the 911 calls that took place, and do you have an opinion, sir, as to why it took so long to secure a cease-fire?

Mr. ZIMMERMANN. Let me tell you what I know about the 911 first and then move to the second one, if that's all right.

When Dick DeGuerin and I were in on April 1, and conducted a fact investigation so that we could give legal advice to our clients, Wayne Martin told us that he had called 911 as soon as the shooting started, and I remembered distinctly interrupting him because he was a civil lawyer, a Harvard Law School graduate, and I said:

> Wayne, don't lie to us, because 911 calls are recorded, and when we get out of here we're going to go get those 911 calls, and if your voice isn't on them, then we are going to doubt whatever else you are telling us.

So we were aware on April 1 that there was a 911 call, and they said it reflected what had been passed on by the postman; that is, that 75 armed men were going to be making an attack; and, you know, there weren't 75 men as it turned out, but I think it's signifi-

cant, when the 911 tapes were released, there's Wayne Martin using that exact figure—there's 75 armed men here; they are shooting; we have women and children; call them; tell them to stop it or to hold off—when we were—we were also told that the firing started from the outside and that they had been fired on by helicopters.

If you listen to the 911 tapes that were eventually released, you hear my client, Steve Schneider, in the background in some other part of the room. Maybe he didn't even know that the telephone call was being made. And he's saying here come the helicopters—here come the choppers with people on them; they are firing again. So that's recorded.

And so the significance of those tapes, I think, to your second part of your question to me and to Dick was that we were being told the truth by the people on the inside by independent evidence that has nothing to do with the credibility of our clients. That is a recorded telephone call.

Mr. ZELIFF. The gentleman's time has expired.

Mr. Wise from West Virginia; 5 minutes.

Mr. WISE. Thank you, Mr. Chairman.

For purposes of this panel, I would yield my 5 minutes to the gentlewoman from Illinois, Mrs. Collins.

Mrs. COLLINS of Illinois. I thank the gentleman for yielding.

Before I begin my questions, let me make an observation. The 51-day standoff at the Davidian compound was, according to the Department of Justice, unprecedented in the annals of American law enforcement. Over the 51-day period there were 25 trained FBI negotiators maintaining daily contact with people in the compound. They consulted with a vast range of religious, medical, and scientific experts.

Those critics who will argue that the FBI should have waited even longer have a big burden. Koresh was a known liar and a child sex molester. The physical conditions of the compound were deteriorating every day. No one left the compound before March 23, almost a month before the insertion of the CS gas.

While we will never know for sure whether an appeal to Koresh on the basis of religious dogma would have resulted in his surrender, there are some things about his religion that we do know. We do know that Koresh used his religion to justify sexually molesting young children. We do know that Koresh used his religion to terrify children. We do know that Koresh used his religion to separate children from their parents. We do know that Koresh used his religion to murder ATF agents.

Finally, the words of young Kiri Jewell continue to ring in my ears. Koresh, she said, was not coming out; he wanted to die. Under these circumstances, it is difficult to believe that any other outcome was possible.

And so, Mr. DeGuerin, I would ask you, did you hear the testimony of 14-year-old Kiri Jewell who testified that she was sexually molested by Koresh when she was only 10 years old?

STATEMENT OF DICK De GUERIN, ATTORNEY FOR DAVID KORESH

Mr. DEGUERIN. Yes, ma'am, but I didn't come here to defend David Koresh, and I don't intend to. What I did come here for is to give my knowledge to this panel——

Mrs. COLLINS of Illinois. And you did come here to answer my questions, so my next question is, was Koresh concerned about the public's perception of him as a child molester?

Mr. DEGUERIN. Yes, he was.

Mrs. COLLINS of Illinois. Isn't it true that child molesters don't live long in prison as a rule?

Mr. DEGUERIN. I think I see what you're leading to.

Mrs. COLLINS of Illinois. I'm just asking you a question. I don't think you can read my mind. You can answer my question.

Mr. DEGUERIN. There are efforts made to segregate child molesters in jail from the rest of the population, and when they are not segregated, they are in danger of being killed.

Mrs. COLLINS of Illinois. Did he ever talk about his chances of surviving in prison as a known child molester?

Mr. DEGUERIN. Yes, he did, and I covered that subject with Sheriff Harwell and was assured that he would be segregated in the jail.

Mrs. COLLINS of Illinois. So then he did have some major concerns.

After you became his attorney, did any of the Davidians come out of the compound?

Mr. DEGUERIN. I'm sorry.

Mrs. COLLINS of Illinois. After you became his attorney, did any of the children or the women or any other Davidians come out of the compound?

Mr. DEGUERIN. No, ma'am.

Mrs. COLLINS of Illinois. Why would you say that was?

Mr. DEGUERIN. Because it was their home. They didn't want to leave their home. They didn't know why they had to leave their home. They were a religious community that were very proud of their home. They built it by hand. They didn't want to leave.

Mrs. COLLINS of Illinois. How long were you his attorney?

Mr. DEGUERIN. Well, from March 9 until April 19.

Mrs. COLLINS of Illinois. That's roughly 4 weeks?

Mr. DEGUERIN. A little longer than that.

Mrs. COLLINS of Illinois. Did you do it on a pro bono basis, or were you going to charge some kind of fee?

Mr. DEGUERIN. It turned out to be pro bono. I was hoping to be paid and thought I probably would be, but it didn't turn out that way.

Mrs. COLLINS of Illinois. In order to talk with Koresh, you went into Federal court and filed a petition for a writ of habeas corpus; is that correct?

Mr. DEGUERIN. Yes, ma'am.

Mrs. COLLINS of Illinois. And my understanding is that Federal District Judge Walter Smith, Jr., ruled that cult members do not have legal right to counsel while they remain holed up in a heavily armed compound; is that the fact?

Mr. DEGUERIN. No, ma'am.

Mrs. COLLINS of Illinois. Explain it to me.

Mr. DEGUERIN. He has ruled that habeas corpus was not the proper method for establishing contact with Koresh. I believe he was wrong and intended to appeal that ruling, but the FBI mooted my appeal by putting me in contact with him.

Mrs. COLLINS of Illinois. So the FBI then allowed you not only to talk with Koresh but to meet with him after he and his followers had killed—already killed four ATF agents; is that right?

Mr. DEGUERIN. Yes, ma'am.

Mrs. COLLINS of Illinois. Had you ever been allowed to interview a client prior to his arrest for the murder of law enforcement agents after being turned down by a court?

Mr. DEGUERIN. I frequently have interviewed clients before they have been arrested and when they are either being sought by the law with a warrant or before warrants have been issued. It's a frequent practice of criminal lawyers to do so.

Mrs. COLLINS of Illinois. You spent a lot of time with Koresh; is that right?

Mr. DEGUERIN. Yes, ma'am, I did, about 32 hours in person and on the telephone.

Mrs. COLLINS of Illinois. Is it accurate to say that the ATF raid on the compound and the killing of four ATF agents was a fulfillment of his prophecy?

Mr. DEGUERIN. No, not exactly. He thought that it had been prophesized that they would be attacked, and it was a debate that we went into quite at length, about what it all meant and what was next to happen.

There was—I was receiving advice from two religious experts about apocalyptic vision and the Bible. I wasn't very well versed in it myself, I'm just a Methodist, but I did learn a lot both from David and from Dr. Tabor and Dr. Arnold—who are the next witnesses following me—about his view.

His view was a flexible view. That is, he was able to—his view of what was prophesied was not set in concrete. They didn't have to die, and he didn't see the end of this situation as necessarily being his death and the death of his followers.

Mrs. COLLINS of Illinois. That's——

Mr. ZELIFF. Mrs. Collins, your time is expired.

Mrs. COLLINS of Illinois. Thank you.

Mr. ZELIFF. You are having a lot of fun.

The Chair now recognizes Mr. Buyer from Indiana for 5 minutes.

Mr. BUYER. I thank you, Mr. Chairman.

I just have one quick comment. That is, I have to agree with my good friend from New York about all of of us exercising the responsibility of our words, and I think that's why—my laughter is, that is why you see the change in tone coming out of Mr. Schumer. He does also, I believe. Exactly what he is saying. We have to exercise better responsibility in our words. And that's why some of us are pretty upset with the President's press secretary being pretty loose with the tongue and saying things that I am sure that he does not mean, and that is why you don't hear as much about the NRA.

I agree with Mr. Schumer's assessment a couple of days ago that the water has dried up in that river, and that's why you have seen the change in tone coming from the other side, and that's why I

had to share my laughter when he accused us in the change of tone.

So let me yield to my good friend, Mr. Ehrlich, the remaining balance of my time.

Mr. EHRLICH. Mr. Zimmermann, just as a short followup to your previous testimony, I have been able to locate the March 1, 1993, memorandum where in it is noted—Mr. Barr went into this last Friday, as you know. I'm quoting from them at random. Johnston at this point advised Hartnett to stop the ATF shooting review because ATF was creating Brady material.

That's what you were referring to; correct, sir?

Mr. ZIMMERMANN. Yes, sir.

Mr. EHRLICH. And, sir, your professional opinion as to the appropriateness on the one hand and, on the other, the legality of such a policy is what, sir?

Mr. ZIMMERMANN. Well, I think it's inappropriate any time a prosecutor in an ongoing case—and I'm assuming that Johnston you are talking about is the assistant U.S. attorney that planned—approved the dynamic entry search warrant and insisted on a dynamic entry and was very much involved in the case and then later prosecuted the survivors.

Mr. EHRLICH. Yes, sir.

Mr. ZIMMERMANN. That same person. I think any prosecutor would say it's inappropriate to try to discourage Brady material being turned over.

Now, I don't know from this whenever Brady material ever existed, and so that's what probably Mr. Johnston would have an out on. If there was no Brady material, and none—and the fact was withheld, there might not be cause for a new trial, but if Brady material existed and it was not turned over, then somebody needs to have a hearing and establish for a court that Brady material was in fact suppressed. I don't know whether it was or wasn't from here.

Mr. EHRLICH. Thank you, sir.

A question for both of you, and, quite frankly, I had hoped not to get into this area because I have found the testimony with respect to the issue of who shot first quite compelling from the ATF agents who have testified in front of this joint panel.

Now, because you have brought it up and because it is a legitimate issue in these hearings, let me ask an open-ended question to the both of you. What is your opinion on the basis of the evidence that you see with respect to the issue of who shot first?

Mr. DEGUERIN. Part of what a lawyer does is to try to gather facts about the crime, and so much of what I did when I was inside was interview witnesses and look at evidence; and what I saw, and what I was told, it was very compelling that the ATF fired first. Understanding that those on the inside have a big stake in this and I might have been lied to, but what I saw confirmed that they fired—that the ATF fired first. Everyone who was in a position to know from the inside told me that, that the firing came first from the outside.

Some people said that it was the dogs that were being killed, and there were dogs killed. That is, it was part of the ATF plan to kill the pet dogs when serving this civilian search warrant.

I was told that firing came from the helicopters, and Jack Zimmermann and I saw the bullet holes in the ceiling of the highest room in the compound. I saw the bullet holes in the front door. Now, you—this panel can get that evidence.

What you need to find is the videotape that was made of the raid. It disappeared. What you need to get is the photographs of the front that are similar to the one that is being displayed right now. This is a photograph that was taken with a long-range lens from the surveillance house. There's bound to be more photographs. This is early in the raid, as you can see, and there are very few bullet holes in the front of the building.

If you will move to the next photograph, you will see this is taken later, and there are many bullet holes that you can see in this photograph. These bullet holes are—and you can see from the—from the news videotape, how they are made. They are made by officers that are firing blindly, just emptying their clips at the front of the building.

Now, if you will notice the door, I sat by that door for several hours. I went in and out of that door 10 times.

I saw the bullet holes on the door on the right side. Almost every bullet hole was an incoming round, and what I mean by that, it is a metal door, you could easily tell that the bullets were incoming rounds, they were punched in, and I am not the Marine expert that Jack Zimmermann is, but I have been hunting since I was 10 years old, and I know a bullet hole when I see it. Those were bullet holes that were punched in.

Now, you have the power to get that evidence, and you ought to get it.

Mr. EHRLICH. Mr. Chairman, I know my time is up, but I also asked my question to Mr. Zimmermann. I think it might be appropriate for him to complete the answer.

Mr. ZELIFF. You are correct.

Mr. ZIMMERMANN. I agree with everything Dick said. We tried to corroborate, just like with the 911 tape, corroborating everything that didn't have anything to do with our clients telling us.

I think some testimony you got yesterday from the ATF agent from New Orleans was very telling. He said that when they were getting out of the trucks, they were already drawing fire and it was coming from almost every window on the second floor. Do you recall that? He said it was AK–47's and .50-caliber machineguns were shooting at them.

Well, if you will put that first one back up there, when you go back and look at the evidence, that just doesn't hang together, OK? To use a phrase that I have already seen in one of your memos, that does not hang together, because there are no bullet holes up there in the second floor and there is nobody up there shooting in the second floor, there are no windows open up there on the second floor, there are no guns out of the second floor, there are no AK–47's or .50-caliber machineguns, yet the ATF agents are already dismounted and out there, and it looks like they have already taken some casualties, yet no one is in those upper windows, nobody is in the lower windows.

And, let me tell you, if you think that the Branch Davidians had 48 automatic weapons and .50 caliber machineguns already ar-

ranged in a, quote, ambush position and they see—you have got to visualize this. There is about a 500-yard driveway coming up to this place in a plain. You can see it from a long way away. They had already been tipped off.

If the Branch Davidians intended to ambush those people with 48 machineguns and .50-caliber machineguns and they came up in unprotected cattle cars with nothing but tarps on them, they would have blown them away. So that convinced us that they did not, that the Davidians did not fire first.

Now you asked about our personal opinion. My personal opinion is that it was an accidental discharge by one of the ATF agents as he was dismounting and that that was a signal to open fire, which you haven't heard any testimony about. Nobody asked them, What was the signal to open fire if you did open fire? Who made that decision? What command was it?

But I believe that what the evidence from the trial, the criminal trial, was that somebody off to the side heard, somebody fire, and they testified that it came from behind them. So that is why we believe, for those reasons, that the Branch Davidians did not fire first, and I will point out to you from talking to the foreman of the criminal trial jury, who heard 6 weeks of testimony by the Government and 2 days of testimony from the defense, they could not decide, she told me. The foreman of the jury told me they did not decide because evidence was in such conflict as to who fired first.

Mr. ZELIFF. Thank you.

Mr. SCHUMER. Point of order, Mr. Chairman.

My point of order is this. In terms of the structure of these hearings, yesterday we were focusing on what happened at the raid. If these witnesses had statements to make on who fired first, it is only fair to allow those who were in the line of fire, agents like Buford and Rodriguez, to have some rebuttal time, and yet the way these hearings were structured, they are gone, they made their point, nobody controverted them, nobody brought up anything.

Now we have some lawyers who were not on the scene saying they interviewed nameless people—I am sure they can name them—and say oh, no, it is not clear who fired first. That is not fair. That is not a proceeding that is right. If we want to go over the issue of who fired first, then we should——

Mr. ZELIFF. That is not a point of order.

Mr. SCHUMER. It is a point of order. Let me finish. We should have Mr. Zimmermann and Mr. DeGuerin on one side of the table and Mr. Buford and Mr. Rodriguez on the other.

Mr. ZELIFF. I will just make one comment to the witnesses relative to the videotape and the front door.

We have consistently asked as a committee to get a copy of a videotape which they now say is blank. We have asked for the door, and the door is missing.

I will now move, the Chair recognizes Mr. Taylor from Mississippi for 5 minutes.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. Zimmermann, do you have any combat experience?

Mr. ZIMMERMANN. Excuse me, sir?

Mr. TAYLOR. Do you have any combat experience?

Mr. ZIMMERMANN. I have 26 months, sir; commanded two artillery batteries in Vietnam.

Mr. TAYLOR. In Vietnam?

Mr. ZIMMERMANN. Yes, sir.

Mr. TAYLOR. Mr. Zimmermann, did you happen to hear the testimony of the fellow Vietnam veteran, Mr. Buford, who had served with the Green Berets, who said that even as a Green Beret he had been ambushed and he had been on the losing side of ambushes, as I recall. He said he was never outgunned in Vietnam the way he was against the Branch Davidians. Do you have any reason to doubt that?

Mr. ZIMMERMANN. No, sir, I don't doubt his testimony. I don't know what ambushes he was in, in Vietnam. If he was a Green Beret, it was a small unit.

Mr. TAYLOR. Let me just ask you—and, again your colleague said he is just a Methodist; I am just a dumb Coast Guardsman, OK? Thank goodness I have never been shot at, but I can look at what I have seen, you know.

Ambushes, I would think if you are ambushed you don't have the time to pick your shots. I just have a gut feeling if bullets are flying all over me and there is one of me, that you don't really have time to pick your shot, basically that, yes, you are going to empty your clip and hope you hit something and you don't get hit in the meantime.

Mr. ZIMMERMANN. That could be true, yes, sir.

Mr. TAYLOR. That could be true. So that could very well explain the very bad pattern of shots around those windows, couldn't it?

Mr. ZIMMERMANN. It could. I would like to come back to that in a minute, though. I want to answer your question, if I could.

Mr. TAYLOR. OK. Let me take it a step further. You talked about the 911 call, Mr. Zimmermann. Let me tell you this. If you were an ATF agent, I would be defending you the same way. If you were a Marine being accused of being out of line, I would probably defend you in the same way. But I do look at something when they say that helicopters are shooting at us. I mean they have had plenty of time to alter the looks of things, didn't they, by the time you had gotten there?

Mr. ZIMMERMANN. We came in a month later, but we thought about that, and, if I may, we asked the Texas Rangers because—and I have testified under oath at the criminal trial of this. I couldn't tell you whether those rounds were fired from a helicopter or not. All I could tell you is they came from the sky downward. If somebody were standing on top of the roof shooting down into the ceiling, it would look exactly the same way.

Mr. TAYLOR. Thank you very much. You have made my point, Mr. Zimmermann.

There is another point I want to make. I understand you were a Marine, and I thank you for your service to your country. Do you have any sons or daughters in the service now?

Mr. ZIMMERMANN. I certainly do. My daughter is a captain of Marines. She is a prosecutor at El Toro Marine Corps Air Station. My son, who just had the baby last night at 5:15—actually his wife at 5:15—is a first lieutenant of Marines, and he is a naval flight officer, will be flying in an FA–18 Delta jet.

Mr. TAYLOR. Congratulations to both of them. Thank both of them for their service.

My point is that many people say why did they come back with armored vehicles toward the end. I am going to personalize this, Mr. Zimmermann. You are a general; you are Commandant Mundy, and it is your two sons. There has already been one firefight, and the good guys got outgunned, they just flat got outgunned. They were the ones—the good guys were the ones asking for a cease-fire, not the Davidians. The ATF agents were asking for a cease-fire to get their wounded out because they were being so horribly outgunned.

Would you send them in the second time the exact same way? Do you send them in the second time, walking across an open field, a perfect ambush site, or do you try to protect them? Would you send your son or your daughter in the second time, just walking across an open field with a warrant saying, "Gosh, David, you are just a horribly misunderstood nice guy; OK, so you like 11-year-old girls, and maybe you have held a few people here against your will, and maybe you have got a couple illegal immigrants here and maybe 50 to 100 illegal machineguns, but you are really a nice guy, and I am going to send my son or my daughter out here, walking across this open field, because I trust you?"

Mr. ZIMMERMANN. Are you talking about when the FBI went in, in armored vehicles? Is that your question?

Mr. TAYLOR. The second time. Isn't there some justification for trying to save those——

Mr. ZIMMERMANN. I have no problem with that. But let me say something, because we are on national television. You said General Mundy. The new Commandant is a classmate of mine from the Naval Academy named Chuck Krulak. He would be real mad at me if I didn't point that out to you.

Mr. TAYLOR. I only say that because I don't know if General Krulak has some sons in the service.

Mr. ZIMMERMANN. He does, and you are right, and there is nothing wrong with them, as far as if that were what they were doing, just using it to protect their people. When we get to how they were used later on April 19, I have a different opinion.

Mr. TAYLOR. Would you send them in with no protection?

Mr. ZIMMERMANN. No, sir.

Mr. TAYLOR. I want to make that perfectly clear. I would not want your children to be treated that way who are serving our country.

I am going to ask you, since you are defense lawyers for a Davidian and what has now become the Davidian, the same question I have asked everybody else: Have you seen anything, heard anything, that would lead you to believe or read anything that justifies the murder of those 4 ATF agents, the 20 more who were wounded by the Branch Davidians, by David Koresh and his followers, on the morning of February 28?

Mr. DEGUERIN. Yes, sir.

Mr. ZIMMERMANN. Yes, sir.

Mr. TAYLOR. Tell me what it is, sir.

Mr. DEGUERIN. The jury in San Antonio found that the killings of the four agents were in self-defense.

Mr. ZIMMERMANN. They were acquitted of murder, sir. Did you know that? They were acquitted of murder and acquitted of conspiracy to commit murder. Every single defendant, all 11 were acquitted of murder. So that is why we are answering that that way, because obviously there is evidence that didn't convince a jury.

Mr. TAYLOR. Weren't the Menendez brothers acquitted? Is our judicial system perfect? Are you going to tell me that every murderer in this country who has walked was really innocent?

Mr. ZIMMERMANN. You asked me did we know of anything that said they weren't guilty of murder, and the answer is yes. Everything we just told you plus a jury's verdict after a 6-week trial.

Mr. TAYLOR. Let me bring it close to home, Mr. Zimmermann. Those weren't ATF agents, those were your two children who were sworn to protect this country in a different branch of the service.

Mr. ZIMMERMANN. Yes.

Mr. TAYLOR. And they did what those ATF agents did.

Mr. ZIMMERMANN. Yes.

Mr. TAYLOR. Was it justifiable for David Koresh to kill your kids?

Mr. ZIMMERMANN. I wasn't there, but if the ATF accidentally or however opened fire on people in their home and all they did was defend themselves in their home, then under the law that is justifiable homicide, it is not murder.

Mr. ZELIFF. Mr. Taylor, your time has expired.

Mr. Ehrlich is recognized for 5 minutes.

Mr. EHRLICH. Sir, this is why I did not want to get into this. This is a very emotional issue. We have compelling testimony on both sides. It is a very difficult issue that each and every member of these panels has to struggle with.

Just for the last minute here let me make the record clear, sir. Is it your testimony as a result of interviews with the jury foreman or individual jurors that they came to a conclusion with respect to who shot first?

And my followup is: Was there a jury interrogatory with respect to who shot first, and what were the instructions from the judge?

Mr. ZIMMERMANN. To answer your second question, there is just a general verdict of guilty or not guilty on each of the separate charges. There wasn't a question about who shot first, and yes, Sarah Bain—the foreman of that jury said they were not able to decide who shot first.

May I make a comment, though, because I would like to keep this all focused. I think we have—the hearings are going right to what Congressman Schumer had said they should be: Let's focus on law enforcement so that we can increase their status. We don't want, none of us want, the FBI or the ATF to be destroyed by this. We want them to be enhanced by it.

Who fired first is really irrelevant, because you need to look at that ATF plan. I look at it just like Congressman Taylor said: If those were my sons—and, by the way, one of those four who were killed was one of my Marines; he was a reserve Marine—we ought to look at it and say is that a faulty plan? was there something wrong with the way the ATF conducted that?

Even if they were ambushed, which I don't think they were, but even if they were, how silly is that to have an operation in an open area like that with no cover, when you suspect people to have .50-

caliber machineguns and automatic weapons, and then just sacrifice those people like that?

You know, if that kind of operation order were given by a Marine second lieutenant going through the basic school, they would transfer the guy to the Air Force.

Mr. EHRLICH. Mr. Zimmermann, let me tell you, sir, I appreciate your comments, both of you, because the purpose of these hearings are twofold, and it is certainly not to denigrate law enforcement, it is to find the facts as best we can, arrive at our own individual opinions, and to make sure, as I prefaced my remarks along the same lines, that changes have been made so that something like this could never happen again, and that is certainly the twin purposes of these hearings.

My time is running out. I have a question for Mr. DeGuerin.

Mr. DeGuerin, this is the classic Monday-, Tuesday-, Wednesday-, Thursday-, Friday-morning quarterback question, but let me ask it anyway. Would you describe, sir, in your own mind, your opinion with respect to the issue of what could have been done to get the Davidians out of that compound without bloodshed.

Mr. DEGUERIN. We were on the way to doing that. On April 14 there was a major breakthrough, and that breakthrough was David Koresh's letter to me, which I promptly gave to the FBI, that said that he had received his mission, that he was working on writing his interpretation of the seven seals, and that everyone inside was relieved that they didn't have to die now, that the prophecies were not being fulfilled now, and that this would be resolved. And I talked with Steve Schneider on the telephone about that, I talked with the survivors later, and the mood on the inside had definitely changed on the night of the 13th and the morning of April 14.

I had those letters reviewed by Dr. Tabor, by Dr. Arnold. They agreed that this was a major change in what had gone on in this religious view that was so overpowering all of those people in there. They believed that they could not do anything except what their religion told them to do.

Mr. EHRLICH. But, sir, let me ask you, how do you respond to what, in my view, is a very legitimate observation, a rejoinder to your observation that you are dealing with a con artist, you are dealing with a guy who was desperate, you are dealing with a guy who knew he was looking at a very long prison sentence if he walked out of that compound, someone who was a real bad character, had sex with kids, the whole 9 yards, who had lied on a consistent basis? How does your opinion jibe with those facts?

Mr. DEGUERIN. I am not going to, again, try to defend David Koresh, but what he told me about factual matters and about religious matters all panned out. What he told me about what had happened, his ability to relate the facts to me and for me to check those facts, all panned out.

We were not dealing with simply David Koresh, but we were also dealing with Steve Schneider, a former teacher of comparative religion; with Wayne Martin, a Harvard law graduate. They were rational, they were reasonable, and they had this religious compulsion that was not understood by the negotiators and that was not appreciated as being serious. It was serious. They were sincere about that.

Mr. EHRLICH. I see my time is about to run out. I just wanted to take this opportunity to thank the both of you for your appearance here today and for your factual opinions given to this panel and this country in an unemotional way, and I appreciate it very much.

Mr. ZIMMERMANN. Thank you, sir.

Mr. DEGUERIN. Thank you, sir.

Mr. ZELIFF. The gentleman's time has expired.

Mr. Scott from Virginia has 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

I would ask both attorneys if you were involved in the trial of the aftermath.

Mr. DEGUERIN. No, sir.

Mr. ZIMMERMANN. Neither of us were lawyers. I was called as a witness, Mr. Congressman.

Mr. SCOTT. You indicated that there were—did you indicate that there was a finding of self-defense or a finding of not guilty?

Mr. DEGUERIN. A finding of not guilty. In a criminal trial there is usually just a general verdict, and it was a—the only defense to the murder and conspiracy to murder was self-defense.

Mr. SCOTT. You could have also had a finding that these Davidians were not responsible for the killing of the officers. However, others, had they been on trial, would have been guilty. Is that accurate?

Mr. DEGUERIN. That is possible, but they were also found, or some of them were found, guilty of voluntary manslaughter, and the judge—it was a mixed finding, but self-defense—the judge only applied self-defense to conspiracy to murder and murder, and they were acquitted; every one of them was acquitted of those offenses.

Mr. ZIMMERMANN. Congressman Scott, I don't know if this will help you understand the context of that, though, but from the opening statement——

Mr. SCOTT. Let me tell you, the context is the response to Mr. Taylor's question where you said they were justified, there was justification for killing law enforcement officers, and you used the verdict as your rationale.

Mr. ZIMMERMANN. No, sir. His question was, Have you known anything, have you read anything, have you heard anything that would provide justification for murder? And I said they were not convicted of murder, and what I was going to add to you, sir, was that the prosecution's theory, from the opening statement on, was that everybody in the place, all of these people, were all responsible, and they said we will put a weapon in every person's hand in that trial.

Mr. SCOTT. Let me get to some physical evidence. Have you seen, did you indicate that you had seen, the door that—the front door?

Mr. ZIMMERMANN. Yes, sir.

Mr. DEGUERIN. Yes.

Mr. SCOTT. And you saw bullet holes all on one way. Is that what I understood you to say?

Mr. DEGUERIN. I said most of the bullet holes that I saw.

Mr. SCOTT. So there were bullet holes going both ways?

Mr. DEGUERIN. There were. There were no bullet holes that I noticed in the left hand—this was a double door, and it opened. If you

are facing the compound as these photographs are, the door on the right of the double door is the only one that operated. It opened inward.

Mr. SCOTT. Are you sure that there are bullet holes, most of them going in? Is that your testimony?

Mr. DEGUERIN. Yes, sir.

Mr. ZIMMERMANN. Yes, sir. In fact, I didn't see any coming the other way, to be honest with you, because there was a barricade by the time I got there. I didn't see any coming the other direction, but Mr. DeGuerin did.

Mr. SCOTT. I think we may be able to get the door.

Mr. DEGUERIN. Make sure you get the correct door. The door that survived for the trial was the door on the left, and the door on the right disappeared. It has to be the door on the right. That is where I saw the bullet holes.

The door on the left was stationary, and the way that it happened, as explained to me by Koresh—we have a tape here in which he explains it—was, he stepped out and on to the porch and was met by gunfire from the agents and then went back inside and slammed the door, and he pointed out those bullet holes to me. Those are the—that is—the door on the right-hand side is the door that had the door handle, and the door that survived for the trial was the wrong door.

Mr. SCOTT. I would yield 1 minute to the gentleman from New York.

Mr. SCHUMER. I don't get this idea of bullet holes through the door. Let's just take this hypothetical, gentleman, and that is that the ATF agents advanced on the compound, the Davidians shoot from the windows. They are not going to shoot through the door, and——

Mr. ZIMMERMANN. Exactly.

Mr. SCHUMER [continuing]. Then in response the ATF agents shoot back. Of course the majority of bullet holes would be through, would be going in that direction, because the Davidians are not going to keep the door closed and shoot through it.

Mr. ZIMMERMANN. No, they wouldn't, would they? They wouldn't do that.

Mr. SCHUMER. So all the bullet holes should be going in one direction. That is not the issue. The issue is, who fired out of the windows first.

And I appreciate the gentleman yielding.

Mr. SCOTT. Reclaiming my time, let me change subjects for a minute. Do either one of you question the validity of the search warrant or the arrest warrant?

Mr. DEGUERIN. Yes.

Mr. ZIMMERMANN. Yes.

Mr. SCOTT. What is your challenge of the validity?

Mr. DEGUERIN. Vagueness, stale information, and let me make clear here that I think the panel has been somewhat misled by thinking that there was no challenge to the search warrant.

What the judge held was that the challenge to the search warrant was moot; that is, it didn't make any difference because neither the ATF nor the FBI was not claiming to want to introduce any evidence gained as a result of the serving of that search war-

rant, so it didn't matter to the issues in the trial, and thus it wasn't litigated.

Mr. SCOTT. Under the *Leon* rule, was there much to litigate? Even if it was illegal, would it make any difference?

Mr. DEGUERIN. If it was deliberately falsified under *Franks* v. *Delaware,* then *Leon* would not apply.

Mr. SCOTT. If it were just illegal, but in good faith illegal was there any point in litigating it?

Mr. DEGUERIN. I have a philosophical argument that you can't have a good faith illegal.

Mr. SCOTT. But under the *Leon* rule there is not much point in litigating it.

I would ask you, if you have a situation where you want to challenge police practices as being illegal, how do we protect innocent people if we can't have a viable exclusionary rule?

Mr. ZIMMERMANN. You can't.

Mr. DEGUERIN. You need a viable exclusionary rule, and *Leon* is an abomination in our criminal jurisprudence.

Mr. ZELIFF. The gentleman's time has expired.

Mr. Scott, if you have access to that door, would you get it, and also the missing tape of the 28th.

Mr. SCOTT. I don't know anything about the tape, Mr. Chairman.

Mr. ZELIFF. You said you thought we could get the door.

Mr. SCOTT. I understand that it was—was it not introduced in court?

Mr. ZELIFF. We are looking for the door that is missing. If you can get it and you know where it is, please bring it.

Mr. SCOTT. I will do that, Mr. Chairman.

Mr. ZELIFF. The Chair now recognizes Mr. Chabot of Ohio.

Mr. TAYLOR. Would the gentleman yield? If the reporters from the Waco Tribune and the lady who said she was held against her will show up with the door, they will all be admitted and allowed to testify at the same time.

Mr. ZELIFF. The Chair thanks the gentleman from Mississippi for those outstanding remarks.

Mr. Chabot, please, 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

Before I yield, I would just like to comment that periodically during these hearings, we have heard it insinuated that one side or the other is more pro or less pro law enforcement than the other side, and I would just hope that everyone here shares the goal that we should learn as much as we can from the mistakes that were made at Waco so that we can protect the lives of both law enforcement personnel and civilians. With that, I would like to yield the balance of my time to the gentleman from North Carolina, Mr. Howard Coble.

Mr. COBLE. I thank the gentleman from Ohio for yielding.

Gentlemen, good to have you all with us.

Mr. Zimmermann, it may be because of my advancing age, but you don't look old enough to be a grandpa.

Mr. ZIMMERMANN. Thank you, sir. I said the same thing.

Mr. COBLE. It is good to have you here nonetheless.

Mr. Chairman, I am going to extend, before I put my questions to these gentlemen, to what the gentleman from Ohio said. I am

trying my darnedest to keep my composure during these hearings, but it is becoming increasingly difficult.

Yesterday an associate stopped me on my way from the floor, and he said, "I am getting tired of you Republicans and one Democrat trying to bash law enforcement."

Well, as my grandma used to say, that made my coffee taste real bad. I said to him, "On what do you base this?" I said, "How much of the hearings have you observed?" "Oh, I have seen none of it on television," he replied. "I only read it in the newspaper." I said to him, "Friend, for your information, as far as I can tell, no Republicans, nor Democrats for that matter, are bashing law enforcement," and I am about to lose my composure now, but here is a man, a well-informed citizen, already rushed to conclusion, having not watched 1 second of the hearings, OK, but he read it in the printed media. He needs to either start reading other newspapers, I told him, or find time in his schedule to watch these hearings.

Mr. Zimmermann, as you pointed out, the word is "enhance." I am not bashing law enforcement and neither are my colleagues, and last week many of the questions were framed in such a way to imply that those of us who endorse these hearings in some way were sympathetic to Koresh, and I resented that as well.

Mr. DeGuerin, as you pointed out, we are not here to defend Koresh, but, having said that, I want to pick up where the gentleman from Maryland left off. Strike that.

Let me say one more thing while I have got my temper boiling. Someone earlier talked about Monday-morning quarterback as though it were an indictable offense. Folks, that is what hearings are all about. Hearings provide us with the luxury of applying 20–20 hindsight. If no mistakes were ever committed, there would be no need for hearings.

Sure, we are applying Monday-morning quarterbacking, sure we are applying 20–20 hindsight, hoping, Mr. Zimmermann, as you pointed out, to enhance the reputation of these Federal agents. I don't like the idea that the ATF and the FBI are blasted, bashed.

Now having said all that, back to Koresh, Mr. DeGuerin. If I were hosting a hamburger cookout in my neighborhood Saturday night, I don't believe Koresh would make the cut on my guest list. I don't think I would want him there.

Having said that, do you believe—and you were talking to the gentleman from Maryland about this. Apparently you believe that he was sincere in his religious convictions based upon your conversations with him. Is that a valid conclusion?

Mr. DEGUERIN. Yes, sir.

Mr. COBLE. Something that has bothered me—and this is the third time I have mentioned it—is the nonarrest of this fellow. He was the nerve center of the compound. It was always my belief, if they could have taken him under custody and control of the ATF, or whoever, got him out of there, get the charismatic leader away from the compound, and then conduct your search.

The Treasury report said, on the one hand, oh, he never left the compound, so therefore we couldn't arrest him. Well, at the criminal trial it became apparent that he in fact did leave the compound. Then the Treasury confessed subsequent: Well, it wouldn't have been a good idea to have arrested him, because if we

had done that, Mr. Noble himself said evidence would likely have been destroyed, and other agents I think said that the Davidians would have resisted.

Is it your belief, Mr. DeGuerin, that he could have in fact been arrested beyond the confines of the compound?

Mr. DEGUERIN. I do believe that he could have been, and I investigated that and talked to people who had seen him on the outside. The local service station that was just a few miles away had seen him very recently and frequently. He jogged out in the neighborhood almost on a daily basis. He went to a local bar and pub in Waco called the Chelsea Pub. People there remembered seeing him in the weeks immediately before the raid. He had been seen all over the place.

What the Treasury report accurately says is, the undercover operation or—excuse me—the surveillance operation didn't accurately record whether he came or went. They abandoned the idea of arresting him outside, I think, because they wanted to arrest him with a big show.

Mr. COBLE. Mr. DeGuerin, my time for this segment has expired. We will pick up on that subsequently.

Mr. ZELIFF. Thank you, Mr. Coble.

The Chair now recognizes Ms. Slaughter from New York.

Ms. SLAUGHTER. Thank you, Mr. Chairman.

I would like to divide my time this morning, 2 minutes to Mr. Taylor, 3 minutes to Mr. Green, if we can find him. He is with the door, Gene.

Mr. TAYLOR. Thank you, Ms. Slaughter.

Mr. Zimmermann, in your capacity as a JAG officer, were you normally on the prosecuting side or the defense side?

Mr. ZIMMERMANN. I was the chief prosecutor of the Second Marine Division for a period of time and the chief defense counsel of Force Troops, Atlantic, sir.

Mr. TAYLOR. So you have done both?

Mr. ZIMMERMANN. I have done both. And trial judge.

Mr. TAYLOR. As a defense attorney—you are obviously very good at it, and as is Mr. DeGuerin—would you be offended—or let me take it a step further—would you move for a mistrial or for the sentence to be thrown out if only the prosecution was allowed to call witnesses and you had evidence, compelling evidence, in defense of your person but you weren't allowed to submit it in court?

Mr. ZIMMERMANN. I would always ask permission to put on whatever evidence I had, sir.

Mr. TAYLOR. OK. So in the case of this raid—and there is compelling evidence in the case of the reporters who wrote the story that appeared in the Waco paper, that were so afraid for their lives that they left town; the paper changed the locks; they issued new security measures; they take the markings off their vehicles so that the Davidians won't be able to identify their vehicles as being a part of that paper.

There was a woman who claims to have been held against her will for 3 months by Koresh's followers. There is another who says Koresh is compiling a hit list of former members that he wants to have them—using his word—eliminated. That is pretty compelling stuff.

On behalf of those 4 dead ATF agents and the 20 wounded, don't you think, in fairness, as a defense attorney, that they ought to be allowed to submit that evidence to this body?

Mr. ZIMMERMANN. That would be similar to the question the judge would have to make as to whether witnesses are material, and I think that what you would have to do, to answer your question, is, what is the focus of this investigation that you are doing now? If it was material, then you should have those people. If it is not material, it would be just like in court; a judge might say, "I am going to deny your motion for subpoena because these witnesses aren't material."

I would try to show they were material, if you asked me what I would do, but I don't always persuade the judges to do the right thing.

Mr. TAYLOR. Mr. Zimmermann, let's get back. I don't know, I didn't call these hearings. I mean, I think some good things——

Ms. SLAUGHTER. Reclaiming my time, thank you, Mr. Taylor.

Mr. Green.

Mr. GREEN. Thank you. I would like to thank my colleague for yielding time.

Mr. DeGuerin, Mr. Zimmermann, your reputation obviously is well earned in Houston, in the Texas courts, and, as Mr. Taylor said, you all are very good defense attorneys, and having seen you in the halls once in a while when I used to practice law, your reputation is there.

Let me ask a little bit, Mr. Zimmermann, about defending themselves, and I have some problems with somebody breaking into my home, you know, and I have a right to defend myself, and your responses to Mr. Taylor's question on who fired the first shot.

But anyway, if someone is charging up to my house and they are wearing ATF vests or jackets or whatever else they have, do I have the right to respond to them, whether they are in police uniform or whether they are wearing an ATF jacket or something like that?

Again, as a lawyer, tell me, because one of my concerns, and for my constituents, is that we have the right to defend ourselves in our home, and if somebody is breaking in, how do we know that they are police officers? Particularly in Texas, we have so many different kinds of police officers' uniforms.

Mr. ZIMMERMANN. That is right, and I can't give you an answer that would apply to everywhere, sir, but the answer is, what was the conduct of the police officers on the raid? My memory is from the videotapes that the ATF was on the back, not on the front, and there might be some question whether they were ATF agents.

Mr. GREEN. We were shown a vest here that day that I believe had "ATF" on the front of the vest.

Mr. ZIMMERMANN. The identity probably wouldn't be the issue. The issue was what they were doing, because this was daylight.

If somebody comes in in a military type attack and fires first and lays down automatic weapons fire, like we believe was done on that front door, then I believe the law in Texas would allow you to defend yourself. If they just come up and say, "We are here to serve a search warrant," you have no right to resist that with force, none.

Mr. GREEN. The best evidence we have so far are the live witnesses who were here.

Of course the ATF agents said at another table but the same setting that they did not fire first, and it is your testimony that the Davidians, in your interviews with them, and, Mr. DeGuerin, you said you talked to them 10 times, and of course they are not here, and the best evidence we have is from the ATF agents who were there.

Let me get one more question in before my time actually runs out on the bullet holes in the ceiling. Again, there was no testimony, even from one of the ATF agents in the helicopters, that there were any shots fired from the choppers. When you said there were shots in the ceiling, it could have been from either someone on the roof, or did you look at them? Again, Mr. DeGuerin, you said you have hunted all your life and you can tell whether a shot is incoming or outgoing.

Mr. DEGUERIN. Well, let me correct that. It was a sheet rock ceiling, and you could tell from the way the sheet rock was punched out down that it was bullets that had come down that had punched that out.

Now, I asked the Davidians to take photographs of that because I wanted to preserve that as evidence, and I asked the Texas Rangers when they did their search to please note that ceiling because I expected it to survive. Of course it didn't. But it was clear to me and clear to Jack that those were incoming rounds.

Now, there was no one on that roof, never was. It is a flat roof. You can't see it in that photograph, but it was the highest structure in the neighborhood. The only way that those bullets could have been made was from someone standing on the roof shooting down or someone shooting from the helicopters.

Mr. ZELIFF. The gentleman's time has expired.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. ZELIFF. The Chair now recognizes the gentleman from Indiana, Mr. Souder, for 5 minutes.

Mr. SOUDER. I yield my time to Mr. Coble, hopefully not upsetting his coffee.

Mr. COBLE. I thank the gentleman from Indiana.

Gentlemen, as you all can tell from the format here, we have to do this in segments.

Mr. DeGuerin, you were wrapping up about the lack of arrest of Koresh. If you will continue what you were saying.

Mr. DEGUERIN. I am sorry, there was someone coughing, I didn't hear you.

Mr. COBLE. You were wrapping up in response to my question concerning why Koresh was never taken into custody. If you will conclude that.

Mr. DEGUERIN. Well, frankly, I think it was because some of the supervisors wanted to continue and make a big show that this went off. I think that this is editorializing. I think we need to focus on not why the raid went bad necessarily, we know why it went bad, the surprise was lost, but why it was planned that way in the first place, excessive force.

Provocative force provokes, as the word implies, a violent response. I might be able to get you to hit me if I came up and was provocative enough to you, but whose fault is that? Is that my fault or your fault for hitting me when I provoke you?

My point is that this dynamic entry, which really means a military style raid, was wrong from the beginning. Ask the FBI agents. Ask Jeff Jamar, who was an agent in charge. If the ATF had asked him in advance should we do a dynamic entry there, he would have said no. You just don't do a raid like this on a building that had over 50 rooms, 130 residents, women and children, because you cannot get all those rooms and all those people secure quick enough.

Not only is surprise important, but speed is important, and if you can't get them, you have got a hostage situation.

Mr. COBLE. I think that has been changed, we learned yesterday.

Let me put this to you and Mr. Zimmermann. Just prior to the big raid, the firestorm, I believe you all were in negotiations with the FBI on a regular basis, were you not?

Mr. ZIMMERMANN. We were speaking with them. We were not negotiating on behalf of anybody. We were just serving as lawyers, trying to get them out and into the courthouse.

Mr. COBLE. OK. If you will, from either of you, tell us how that progressed, whether or not the FBI was cooperative with you, whether they were deceptive with you. Did they mislead you? Were they above board? Let us hear about that.

Mr. DEGUERIN. Let me say that the FBI treated me cordially, with respect, throughout my discussions with them, and I think that it was a difficult decision for Jeff Jamar to make to allow a defense lawyer to go into—you know, defense lawyers aren't real popular with FBI agents, and I am sure there was some dissension in the ranks about allowing that to happen, but he saw it as a possible solution.

We had parallel interests. I wanted a live client in court, and he wanted it to end without violence and to get everybody in custody, and we really worked hard at doing that. I thought we were really on the road to getting that done.

The FBI was above board with me. They didn't let me in on any of their secrets, but why should they? They treated me with respect when I came out and asked questions about what would happen and what would be the conditions, not as a way to negotiate, they were very forthcoming with me.

And, for instance, on the first full day that I went in, I came back out, asked to see the sheriff to find out about the jail conditions, and within 10 minutes I was put in a car on a Wal-Mart parking lot with a sheriff so I could talk to him.

So to answer your question, they were very forthcoming and straight up with me.

Mr. COBLE. Mr. Zimmermann.

Mr. ZIMMERMANN. I would echo that. I was a few days behind Mr. DeGuerin because their theory was, we are going to try at the beginning to use our own negotiators. That lasted about 3 or 4 weeks. Then the next step was, we are going to let Mr. Koresh's lawyer come in and see if he can do it, and then Dick had requested my assistance because Steve Schneider was doing most of the talking and he was my client.

As an ethical lawyer, he didn't want to be talking to another lawyer's client. They were very professional to us.

I will say this—I don't want to take up more of your time, but in my written statement I make that statement. I have publicly stated, I have great admiration for the FBI——

Mr. COBLE. Gentlemen, how about the loud music, the playing of the loud music? Does anybody want to be heard on that?

Mr. DEGUERIN. That was the wrong tactic. It was the wrong tactic. When you are trying to create trust between the FBI and the Davidians, then you don't try to punish them or torture them at the same time, and——

Mr. COBLE. We would ask about the advisability of that.

Mr. DEGUERIN. It is not advisable. Under that circumstance, under what we had going on in Waco, that was the wrong tactic. Increasing the pressure, rather than drive them away from David Koresh, had the effect of bonding them closer together.

Sharing a terrible experience like basic training, for instance, you bond together. People from diverse backgrounds, no matter how different they are, will bond together with that kind of experience, and that is exactly what the FBI was doing. It was wrong.

And the second reason it was wrong is because it played right into this apocalyptic vision that they had: The end was coming, with chariots afire, with giant beasts breathing fire, and here are these tanks going around there breathing fire. It just played right into this apocalyptic vision. That was the wrong tactic.

Mr. COBLE. So I guess what they had hoped to do would be to separate Koresh from his followers, but it in effect resulted in a cohesive binding probably. Is that what you are saying?

Mr. DEGUERIN. Yes, sir.

Mr. ZIMMERMANN. I agree.

Mr. COBLE. The red light illuminates again, Mr. Chairman. I will conclude for the moment.

Mr. ZELIFF. Thank you, Mr. Coble.

The Chair now recognizes Mr. Watt from North Carolina.

Mr. WATT. Thank you, Mr. Chairman.

I want to express my thanks to the witnesses for being here and the candor with which they have presented their statements up to this point.

I think it was Mr. DeGuerin who has indicated that he thought the dynamic entry was just a bad mistake, and throughout the hearing I have been periodically, when I have a chance to ask questions, trying to identify our legislative nexus here, what it is we are trying to accomplish.

I take it that there is nothing we could do legislatively that would directly bear on whether a dynamic entry in a situation of this kind would be appropriate or not.

I did hear Secretary Bentsen, or former Secretary Bentsen, when he was here, say that as a result of what happened at Waco, the Treasury implemented one or more rule changes having to do with the level of supervision and the level of reporting responsibility between ATF and folks further up in the supervisory chain.

I suppose we could have, as a Congress, ordered a more direct level of supervision, but they have done that now before we got to these hearings.

Can you identify anything that you, either of you, thinks that we ought to be doing legislatively in response to the Waco incident?

And I would invite you specifically to talk about in terms of the level of supervision that was there but also to give me your thoughts legislatively in terms of what we can do to assure individual rights against searches and seizures that are unreasonable.

And I would ask you also to comment if you are aware of the specifics of the bill that we previously passed out of the House in this session of Congress. I think it was House bill 666. I invite you to give me your comments on whether that helps us in protecting individual rights or whether we have done a disservice to the rights of American citizens.

Mr. DEGUERIN. Well, one thing I can beg that you not do is do away with the exclusionary rule. I think that is the only thing that has been shown to be effective in enforcing the fourth amendment.

I was very encouraged to hear Director Magaw say yesterday that he has already instituted within the Treasury Department the requirement, or within ATF, the requirement that they confer with other agencies; and, second, I was very happy to hear him say that in the future dynamic entry will be done only as a very last resort.

As legislatively what can you do? Gee, I don't know. If you can undo *Leon,* that would be a giant step in the right direction.

Mr. WATT. Explain that for me so that I make sure all of particularly the members of the Judiciary Committee understand that, and maybe the members of the American public might understand it. Can you put that just in simple, everyday language that maybe the American people can understand?

Mr. DEGUERIN. Yes, sir.

Basically what *Leon* says is, if you have got a search warrant and you act on it, then you are acting in good faith and you can't challenge the illegality of the search warrant.

As practicing lawyers, we know that usually judges rubber stamp the applications for search warrant, and the only thing, the way we made progress in the jurisprudence of this country, was requiring search warrant applications to be accurate and to have enough probable cause in them to justify a supposedly neutral and detached magistrate into authorizing a search. But *Leon* wipes that out.

If you have got some judge that doesn't carefully read the search warrants—and, cynically I say, that happens all the time—then he just rubber stamps it and that is the end of the inquiry. It shouldn't be——

Mr. WATT. What impact would House bill 666 have on *Leon*?

Mr. DEGUERIN. I am not familiar with it.

Mr. WATT. Do you know, Mr. Zimmermann?

Mr. ZIMMERMANN. In general, I believe it deals with lessening the requirements for Federal law enforcement officers only as it relates to search and seizure, but that is about all the detail I know. Am I thinking of the right bill?

Mr. WATT. That is correct.

Mr. ZIMMERMANN. May I answer your other question, though? Mr. DeGuerin has answered the other part. I am answering the question about, what can you legislate that might prevent an ATF repeat?

I don't think you can legislate judgment, but I think what you can do in your oversight responsibility are two things, change the

procedure that led to Waco and change the leadership that led to Waco.

Now, they came in and told you yesterday that they have already changed the procedure, all right? We have to take their word on that, they are professional law enforcement officers, but I can tell you what the American public does not buy, that they changed the leadership, because nobody has been disciplined in a meaningful way. There has been no criminal prosecutions, and people have committed felony offenses.

Mr. Merletti told you yesterday that two of those agents in charge of this raid committed Federal felony offenses. There has been no prosecution, and there has been no meaningful discipline, and those people are still ATF agents, they work for all of us, we pay their salary, and I am still paying Sarabyn's salary and Chojnacki's salary, and I don't like that. Those people should be removed from their positions.

Now, on the FBI, we haven't had a chance to address the FBI, and we are going to be gone pretty soon, so I hope we can get some questions about the FBI pretty soon. There has been no one disciplined because of Waco in the entire U.S. Department of Justice chain of command. That is horrible.

Ten people died on February 28, 80 people died on April 19, and no one has been disciplined. No policies have been changed. The only thing they have done is, they have asked for more money to double the hostage rescue team size. That is ridiculous. What you can do: Change the policies, change the leadership. It has not happened.

Mr. ZELIFF. The gentleman's time has expired.

Mr. WATT. Thank you, Mr. Chairman.

Mr. ZELIFF. The gentleman from North Carolina, Mr. Coble, will resume questioning for 5 minutes.

Mr. COBLE. I thank the gentleman.

In the fall of 1993, Treasury and Justice issued their respective reports about Waco, and I am paraphrasing now, but Treasury in effect said, well, ATF blew it, we were the bad guys. Justice, on the other hand, exonerates the FBI.

Well, folks, when I got those two reports, I hate to admit it, but I guess 4 or 5 weeks in this town, one, if you don't develop a severe case of paranoia, you are a rare bird indeed.

I thought this is all too coincidental. One group conveniently assuming blame, the other group waltzing away with no blame. I think, as I told the Attorney General, I said everybody who touched the ball at Waco fumbled it.

Now, having said that, gentlemen, one or both of you, I believe—and I don't think this is in either report to which I referred—you all were involved in a surrender plan with the FBI.

Mr. ZIMMERMANN. We had one already arranged and agreed upon.

Mr. COBLE. I would like to hear about that.

Mr. ZIMMERMANN. About what the proposed plan was?

Mr. COBLE. Yes.

Mr. ZIMMERMANN. Most of that was proposed by the FBI, and Dick and I made only very minor suggested changes which they incorporated. But the plan in general was this: The people on the in-

side were going to tell the FBI the night before, Dick and I were going to be there, we're going to start during daylight, so this is all done during the day, and Dick DeGuerin and David Koresh were going to exit first to show everybody that they weren't going to get executed the minute they stepped outside. And there would be a metal detector set up outside the front door and a bus 100 or so yards away, approximately.

When Mr. DeGuerin and Mr. Koresh went through that metal detector, then Mr. Koresh would have plastic wrist restraints placed on him, be patted down by a male FBI or ATF agent—FBI was our request—and then he and Dick would go to the bus, and then I was supposed to stay in there and then see that the other adults came out, keeping a distance so that law enforcement wouldn't get nervous about people bunching up.

It was going to be tape recorded by the FBI, and there was going to be a press representative there taping it so that there'd be no claims of police brutality and there would be no claims that—the opposite. In other words, both sides would be protected.

And then, as that went through, Steve Schneider would be the last Branch Davidian out, and I would bring up the rear. When they saw me coming through there, that was the signal to send in the HRT teams. They'd come in, make sure nobody else was hiding anywhere. Once they cleared that, then that EODT, explosive ordinance disposal team, was going to come in check for boobytraps and make sure there was none of that, and the Feds were gone.

Texas Rangers were going to take over and the people that were wounded or needed medical care, go to a hospital. Everybody else goes to the command post where a U.S. magistrate judge was going to be there, where they would be warned, taken into official custody, appointed a lawyer, or released if they weren't charged with anything.

And the only suggestion that I can remember, and maybe Dick can add to this, but the only suggestion I remember us making was, I said I'm uncomfortable about those little kids walking out by themselves. Can't we let the kids walk out with their mothers. And they agreed to that. So that was all worked out.

In my judgment, we had a deal, we were going to do it. We told them on the 14th they were coming out. We told them it would take another 10, 12 days. We asked them, "Do you have that much time?" They said, "We have all the time in the world to resolve this peacefully."

Mr. COBLE. What frustrated the plan, gentlemen?

Mr. ZIMMERMANN. Some desk-bound bureaucrat in Washington overrode those people's judgment down there.

Mr. COBLE. Mr. DeGuerin, do you want to add to that?

Mr. DEGUERIN. I don't know exactly how the decision was made, but obviously they decided and someone pushed for it, and that's what you ought to find out. Someone pushed for a plan to send tear gas, and not just regular tear gas, CS gas, which has been banned for use in international warfare. We can't use it against our worst enemies, but they used it against those kids.

Somebody pushed for that plan, and it was too soon. It would have ended peacefully, in my opinion. I don't know who made that

decision. That's for you to find out, and I hope that you can find that out.

I don't know whether it was done on full information. I don't think it was done on the information that we had. We tried to get the information to them about this religious aspect and the sincerity of that coming to pass and them coming out. That's what frustrated it. Someone wanted to end it by forcing an end rather than letting it end.

Mr. COBLE. Mr. Zimmermann, I almost feel sick to my stomach when I hear you say how close that could have—almost within your grasp, and if that could have been executed as you just laid it out, this hearing probably would never have been called.

Mr. ZIMMERMANN. We wouldn't be here if the FBI had waited 10 more days. I shouldn't say the FBI—if the Department of Justice would have waited 10 more days. And if they didn't come out, how much farther down the line would we have been? What would have been lost by waiting 10 days?

I don't know if this is an appropriate time to tell you, but I heard Mr. Noble talk about those funerals, and I believe he was sincere about it, but I got to tell you that this has not been a pleasant experience for Dick DeGuerin and me, because the Branch Davidians had families, they had people that loved them.

One of the worst things that I can remember about this was a phone call from Israel from Shulamet Cohen, the mother of Pablo Cohen, who had just been there, came over from Israel, and, as far as he was concerned, was there from one of those—remember, somebody described a group as musicians and so forth and so on? He was in that group.

When the press reported after the fire that I had represented Steve Schneider, apparently on CNN—everybody in this room was watching this—I got a call from Ms. Cohen, and, between her sobs, to ask me if I had seen Pablo, and I had.

Dick and I had talked to him on April 4. And there had been a tape from his mother. And one of the things that we asked the FBI to do, which they agreed to do, was bring that return tape out with the legal documents and the letter that was addressed to Dick.

And I told her about that, and then she described for me, an Israeli Jew talking to an American Jewish lawyer, watching that gas be inserted into that building, watching an American tank knock down an American house, and then it burst into flames.

Can you imagine the images in an Israeli's mind with the Holocaust survivors in Israel? I couldn't answer. I think you can tell from today, it is not often that I am without words. I could not explain to her how that happened. And her answer—her question was: "I thought he would be safe in America."

Mr. ZELIFF. The gentleman's time has expired.

Mr. COBLE. I thank you. I want—Mr. Chairman, I just want to thank these gentlemen for being here.

Thank you, Mr. Chairman. I have no time to yield back, but thank you.

Mr. ZELIFF. You sure don't. You did fairly well for your 5 minutes, though.

The Chair now yields to the gentlelady from Texas, Sheila Jackson Lee. And I understand you have a piece of audiovisual.

Ms. JACKSON LEE. Mr. Chairman, I thank you very much. And I wish, as the gentleman from North Carolina, I might be so lucky as to have those minutes yielded to me.

So, gentlemen, I am going to have to talk very quickly. I would like No. 32 to be brought over to me, but as I begin, let me say that the compelling statements are such from both of you having been inside. It is not in my purview to try and overcome both the emotion and as well the overwhelming feeling on the loss of life. I will simply acknowledge that we lost lives.

I would like to join, however, my colleague, Chuck Schumer, to say that I wish you were here yesterday, and I think you're right, Mr. Zimmermann, you need to either continue with us—and I know your time is limited—because much of what you have to say deals with the FBI and the Department of Justice, and we should get to that.

Let me—I'm not sure where it is, as it comes—thank you—be able to just see if we can concede on a point of confusion, because that's why we are at these hearings, and I hope that maybe at the end of these hearings we won't have confusion.

But when those ATF officers testified yesterday, they were moving toward the door to serve a search warrant, and as they moved toward the door to serve that search warrant, they testified that shots came out.

I know you have since indicated that there may have been the possibility of them shooting first, meaning these ATF agents, but it could have just as well been the door closing, slamming the door and shots coming out the door. Maybe you said something differently, so I need to understand that. Because I don't think this picture gives us any evidence of who shot first.

Mr. ZIMMERMANN. And what I'm going to tell you may not tell you who shot first, but I'm telling you in my experience it does. The testimony at the trial was that the agent—and he didn't say this yesterday, and out of fairness to him, he wasn't asked this—but the testimony was that as he walked up, after David Koresh closed the door—remember, he did say David came out, said something, the door closed.

The testimony at trial was then fire erupted from inside, and it all came out that front door, the right-hand side of that front door, and that's what wounded people. The bullets came from the inside, through the closed door, which was what I was trying to convey to Mr. Schumer, because he's absolutely right, that makes little sense to me, and I don't think the jury bought it either because, as Dick said, one of those pictures—that picture right up there, you see that person sitting there with——

Ms. JACKSON LEE. I can't see that far. I want to keep us on this one because this is the one we referred to.

Mr. ZIMMERMANN. OK. You see the bullet holes in the right-hand side of the door as you face it?

Ms. JACKSON LEE. Yes.

Mr. ZIMMERMANN. The ATF agents' theory was that the bullets came through that door from the inside. What Dick and I saw were bullet holes in that right side, right where David Koresh had been standing as we were told by the Davidians, but they weren't coming from the inside, they were going from the outside in. That's

why we believed that what the Branch Davidians were telling us was true.

Ms. JACKSON LEE. So we have a point of confusion, and you were there after the initial first day raid?

Mr. ZIMMERMANN. Correct.

Ms. JACKSON LEE. I guess my point is that this still photo does not confirm for us where those shots came, and I appreciate your assumption and your analysis, having been inside. And I do believe that the point of us being here is to try and resolve it, but I wanted to make sure that this photo does not evidence the final word on who shot first.

Mr. ZIMMERMANN. No.

Ms. JACKSON LEE. I wish you were here yesterday. And I will just leave this for now. Let me move quickly and——

Mr. ZIMMERMANN. Mr. Taylor can get that right door, it will solve all our problems.

Ms. JACKSON LEE. We are all working on the door and his witnesses. I hope we can get the EMT dispatcher and the cameramen. But let me go on to say, there were not convictions on conspiracy and murder, my understanding.

Mr. ZIMMERMANN. That's correct.

Ms. JACKSON LEE. But there were convictions on gun violations on some of the defendants?

Mr. ZIMMERMANN. That's correct.

Mr. DEGUERIN. That's correct.

Ms. JACKSON LEE. Let me ask you—I hate using H.R. 666. Let me call it this new legislation on the exclusionary rule. What would be your position—and I think the American people need to understand in laymen's language that we no longer had the necessity of a viable paper search warrant that we could act on in good faith.

How would that have further impacted this very tragic situation?

Mr. ZIMMERMANN. My main concern with anything that deals with the exclusionary rule is not what it has to do with the paper. A piece of paper is not what I'm after. What I want is to involve a neutral and impartial non-law-enforcement officer——

Ms. JACKSON LEE. So if you didn't have that any more, if you didn't have that undercover agent, as I said, on the municipal court bench reviewing and other types of situations, some independent force bringing that undercover agent, who had been in the field, sweating, tense, to review it, losing that intervening action you think would be detrimental.

Mr. DEGUERIN. Yes, absolutely.

Mr. ZIMMERMANN. Yes. I can't believe a magistrate approved that search warrant, to be honest with you.

Ms. JACKSON LEE. But certainly if we remove that by law, that would be a problem.

Mr. ZIMMERMANN. Yes.

Mr. DEGUERIN. It would be terrible. It would put the entire discretion over whether your fourth amendment rights are observed in the hands of an officer who is often, as it goes—often engaged in the competitive enterprise of ferreting out crime, someone with his ox in the ditch, so to speak, someone who wants that search warrant, and you've got to interpose a judge in that decision.

Ms. JACKSON LEE. Innocent people then would be impacted negatively.

Mr. ZIMMERMANN. Absolutely, and if we are talking about searching a person's home——

Ms. JACKSON LEE. My time is almost running out. Finish your point so I can be able to ask my last question.

Mr. ZIMMERMANN. I don't know what 666 says. I don't think if it is restricted to nonhome situations but——

Ms. JACKSON LEE. No, it is not.

Mr. ZIMMERMANN [continuing]. A person's home is his or her castle, and to allow a search without a neutral and impartial judge saying there is probable cause to search a person's home I think lessens all of our civil rights.

Ms. JACKSON LEE. Let me go on to say—and I thank you very much. I am not intending to cut you off. Let me also say in dispute is the helicopter shooting. We have testimony that says they retreated, and of course there is some question.

You indicated—this is a question, Mr. Chairman, so I would like to finish it and be able to have these gentlemen to answer it.

You indicated that it could have been—when I say you, I think it was Mr. DeGuerin—that shots could have been through the ceiling. But I am trying to isolate the disputed issues. This question follows for both of you all to answer.

You were inside, and you made the points about the setting, the atmosphere. We are querying and trying to understand so that we can ask intelligent questions of the FBI how the Schroeders, the Wayne Martins of the world, the engineers, the teachers, or whoever were in there, were mesmerized and so seemingly lacking in the power in decisions to come out and to save themselves, the children, and the women.

If you would answer that question for me, please.

Mr. DEGUERIN. Let me address that, and I hope you ask that same question of the two religious experts that are coming next because they can talk about it in terms that I cannot.

But this was not a bunch of people who had had—who had been hypnotized. These people who I saw—and I met almost everybody in there that died in that fire—these people believed. They believed in the Bible. They were there because of the Bible. Most of them—well, I can't say that—many of them were there not because of David Koresh, some people had been there as long as 40 years. Some people had been born and raised there.

They were there because they believed in a vision of the Bible that was unusual. I don't understand it, and these scholars have a difficult time understanding it, but it was real. You can't legislate away that. In fact, the first amendment says that we can't do anything about that. They believed.

Mr. ZELIFF. The gentlelady's time has expired.

Ms. JACKSON LEE. Thank you very much.

Mr. ZELIFF. The Chair now recognizes the gentleman from Illinois, the chairman of the full Judiciary Committee, Mr. Henry Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

I would like to ask both of you if you agree with what I am going to read to you from an article by Dean Kelly of the National Coun-

cil of Churches that appeared in the May 1995 magazine called First Things:

Ironically, just as the Federal Government was abandoning hope for a peaceful solution, there opened up the possibility of just such an outcome. Early in the siege, Koresh had promised to come out if his message could be aired on national media. He prepared an hour-long audiotape that was broadcast locally but not, he claimed, nationally.

Two scholars of apocalyptic religion, Phil Arnold of the Reunion Institute in Houston and James Tabor of the University of North Carolina, studied the broadcast and believed Koresh could be reasoned with if approached within his own frame of reference.

After several futile efforts to persuade the FBI to let them try, they arranged with Ron Engelman, host of a radio talk show on KJBS to which the Davidians listened, for a half-hour's uninterrupted plea to Koresh to rethink his understanding of the fifth seal, Revelations 6:9:11, which he believed to be unfolding at Mount Carmel.

In the text, the souls of the faithful who have been slain for the word of God cry out to God, "How long before thou wilt avenge our blood?" They are given white robes and told to rest for a little season until the number of their fellow servants who have been killed as they have been should be complete. The sixth seal that follows brings about the destruction of humankind.

Arnold and Tabor in their radio colloquy sought to persuade Koresh that the term translated "a little season," meant in the original Greek a period of as much as a year, leaving time for Koresh to complete his work before the sixth seal intervened.

Koresh apparently accepted this idea, for the day after Passover he sent out a letter via his lawyer saying that God had permitted him to explain in structured form the decoded messages of the seven seals and that upon completion of that task he would surrender

The FBI saw this as just another in a long series of delaying tactics and went ahead with their plans to use tear gas. They did send in writing materials, however, on Sunday, April 18, and Koresh worked most of that night dictating to Ruth Riddle, who typed his words on a battery-powered word processor. He completed a 5-page introduction to the seven seals, a poem of 13 quatrains, and a 7-page exposition of the first seal. At that rate, Arnold and Tabor estimated, he should have completed the task in two or three weeks, but he did not get the chance.

The next morning the FBI gas assault began and David Koresh must have concluded that his original scenario of imminent destruction was correct.

Do you agree with that writing?

Mr. DEGUERIN. I do. I can speak to that if you would like. What we found, the FBI ridiculed the idea that he would be writing the seven seals and, in fact, after the fire, said they had evidence he was not at work on that.

We discovered by talking to Ruth Riddle that she had taken this computer disk out with her when she escaped the fire, and we found that he had been working on it and it was a real thing. And we also found that those on the inside, these believers, thought that this was a great revelation to them in that their death, the end of the world as prophesied by the Bible, was not coming immediately but was some distant time in the future.

That's what I was trying to, with the help of Tabor and Arnold, talk to Koresh and the others about, that their interpretation that the Apocalypse was now was that, no, it's a little bit later.

And that's the history of Seventh-day Adventism. There have been prophets time after time who have prophesied the end of the world at a certain date, and everybody gathers, they wait for the end of the world, and it doesn't come, they dishonor that prophet, and go on, and that's the history of those people.

Mr. HYDE. The unfortunate thing is in the context of Jonestown and the James Jones experience, there is such a cynical approach towards religious fanaticism. There is an unwillingness to under-

stand or believe that there are people in the world who are persons of belief, and they believe strange things by our standards.

But, had the understanding been these weren't hostages, these were willing members of a religious group, and to get in there and to dissipate them would take persuasion, argumentation from—in their frame of reference, not tear gas and not tanks. And that, it seems to me, was the judgment made somewhere along the line that ended up costing a lot of lives.

Mr. ZIMMERMANN. I agree.

Mr. DEGUERIN. I agree.

Mr. ZIMMERMANN. And if you in your next few days will find out who made those ridiculously dangerous decisions, then I think that would be exercising your oversight responsibilities, and you're the only one in the country who can do it.

Mr. HYDE. Well, I thank you for saying that, and I think that shows the utility of these hearings. We may not come up with any legislation. There doesn't always have to be legislation, but we ought to come up with information that will help guide us in the future, because I am sure Jonestown and Waco are not the end of this sort of situation.

Thank you.

Mr. ZELIFF. The gentleman's time has expired.

The Chair now wishes to recognize Mr. Brewster from Oklahoma for 5 minutes.

Mr. BREWSTER. Thank you, Mr. Chairman.

You gentleman had more contact—have had probably more contact with Koresh than anyone that I know of. There has been a lot of discussion about what would have happened had he been arrested when he went to town on the weapons charges or whatever.

Was there anyone else in that compound, in your opinion, that could have pulled everybody together in a violent manner?

Mr. ZIMMERMANN. No, sir. My client was Steve Schneider. My partner, Jim Lavine, was Judy Schneider's lawyer. The two Schneiders were married and had a 2-year-old child. Steve was labeled by the FBI as the, quote, "first lieutenant," along with the other military terms that were applied, like the compound, which I have noticed from these hearings you all have accepted. It was Mt. Carmel Center for 35 years, and then when the FBI came in it became Mt. Carmel compound, first lieutenant, cults, et cetera.

Steve was an articulate, decent, peaceful guy who was a college graduate and had his degree in theology. If the FBI considered him the second in command, I can tell you without any reservation that Steve Schneider would not have organized any kind of violent resistance to a search warrant.

In fact, when I had my first meeting with him, I thought he was going to break into tears when we were—Dick was asking the standard lawyer question about, we've got to find out where the five Davidians that were killed are, where are their remains, we need to make sure they are preserved for autopsies, so we can see the angles and so forth, some pretty tough stuff. Steve talked about their loss of life, and he volunteered to me how sad they felt at the loss of the ATF agents' lives.

So in my judgment, there would not have been a violent resistance. Frankly, I don't think it would have been a violent resistance

if the search warrant had been served in a proper manner even if Koresh was there.

But to answer your question, one of the many times he was away, if he had been arrested, put in Federal custody for 3 days—which they can keep him for 3 days with no reason at all—execute a search warrant the next day, I think this all could have been resolved and avoided.

Mr. BREWSTER. You would agree with that, Mr. DeGuerin?

Mr. DEGUERIN. I do agree with that, and I think that it could have been done in a number of other different ways, and history shows they had a good relationship with the local sheriff. He'd surrendered peacefully before on much more serious charges. I understand that the charges that the ATF were bringing were relatively minor Federal felonies.

Now, you know, going to prison, that's not real minor, but in the scheme of things, the maximum punishment for these crimes would have been about 10 years in the penitentiary. Under the Federal guidelines, probably the time in the penitentiary would have been 2 or 3 years. So they are not really that serious, and he'd surrendered peacefully on charges that could have landed him in jail for life.

He had invited the ATF—he told us that story about McMahon that McMahon told here. He told me that inside, and I found that out to be true. I telephoned McMahon, talked to the girlfriend. He had invited the ATF to come in and look at the guns back in July 1992. I think one Texas Ranger could have walked up to the front door and knocked on it and be let in. That's my opinion.

Mr. BREWSTER. That's my next question. I've heard all kinds of stories that the Texas Rangers wanted to be involved in negotiations and Koresh had wanted to negotiate with them. Is there any validity to that or is that only rumor?

Mr. DEGUERIN. It's not exactly that way. It's not rumor. What I wanted to do and what I proposed to David Koresh after talking to Capt. Maurice Cook was that, "David, the world is watching. Let's have one Texas Ranger walk up to the front door and you and I will walk out, surrender to him. That will be sending a message to the people of the world that you don't trust the ATF and the FBI, the Feds that got you in this in the first place, but you do trust our legal system and the Texas Rangers."

And being from Texas, there's that story about one riot, one Texas Ranger, and I thought that would be a real good thing to do. He agreed with it. He thought it was a good idea, and he agreed to do it that way, but not immediately.

I went back, assured—got assurances from Captain Cook that that was okay with him, but he said, "You've got to go through the FBI. It's just protocol. They're running the show, and we're not going to suggest it to them. You do it."

I did suggest it. I can't say it was rejected, but it wasn't greeted with a lot of enthusiasm.

Mr. BREWSTER. If they—after his letter of April 14, what would you have expected the time frame to have occurred had the raid on April 19 not occurred?

Mr. DEGUERIN. It would have been at least a week, maybe a little bit longer.

Mr. BREWSTER. Did this compound have toilet facilities in it? I notice in referring to the Treasury Department deal here, they sent a guy out to an outhouse at one point. Did they even have toilet facilities there?

Mr. DEGUERIN. They did, but very few. They were building this place. It was new construction, although it was used lumber, and they were doing it themselves, and they were very proud of it. They didn't have a lack of toilet facilities out of design, just they hadn't built them yet. They were in the process of building it.

I went into almost every room in that compound, and I saw the building that was going on. They were doing it themselves. There were shower stalls. There were toilets. They just weren't operating yet. They were in the process of construction, future plans that they had, inconsistent with the world is going to end now, and there were other things that showed future plans.

For instance, I was to file a lawsuit to perfect title to the property. They were worried about that. I prepared an inter vivos trust so that any money that came to them or to David as a result of book rights or anything like that over and above legal expenses would not go to him but would go to a trust for all of his children. And I met 14 of his children. And there were other things that were inconsistent with a suicide plan.

Mr. ZELIFF. The gentleman's time has expired.

The Chair would like to announce that there will be at least two votes which will take us about half an hour. We think that it is in everybody's best interests if we recess and reconvene at 12:45 p.m. It's going to be a long day, and I think we will just recess until 12:45.

[Whereupon, at 11:50 a.m., the subcommittees recessed, to reconvene at 12:45 p.m., the same day.]

[AFTERNOON SESSION]

Mr. ZELIFF. The subcommittees will come to order.

The Chair now recognizes Ms. Ros-Lehtinen from Florida for 5 minutes.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman. I would like to yield my time to Mr. Buyer.

Mr. BUYER. Thank you, gentlelady, for yielding.

One thing I want to make a comment on is that one of you—I think it was you, Mr. Zimmermann—testified that we have had changes in policy but really no changes in the leadership.

Mr. ZIMMERMANN. Yes, sir, that was me.

Mr. BUYER. Was that you?

Mr. ZIMMERMANN. Yes, sir.

Mr. BUYER. One thing I have noticed the last few days as I sit and listened, whether it was Secretary Bentsen or Mr. Noble from yesterday, is that it appears that the political appointees in the whole Waco so far, it's almost been see no evil, hear no evil, speak no evil. I either wasn't in charge at the time, but I sure am in charge now. And either I didn't have the authority or it was outside my jurisdiction or that briefers didn't tell me enough information, because if they had given me information I probably would have made a different decision at the time. But it's good to know that they are in charge now.

Well, let me——

Mr. ZIMMERMANN. Did you want me to answer a question?

Mr. BUYER. No, I guess that was really political editorializing on my part, and the change of leadership will perhaps come later.

Let me ask a question with regard to an arson expert. I'm going to go down here for a moment. Did either of you have an opportunity to meet with Mr. Paul Gray, so-called independent arson expert who reviewed the cause of the fire?

Mr. DEGUERIN. Let me tell you how that happened. I got a telephone call within a couple of days of the fire from Paul Gray, who identified himself as an independent arson investigator with the Houston Fire Department.

Mr. BUYER. Is this the same Paul Gray whose business card is here? U.S. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, Paul C. Gray.

Mr. DEGUERIN. Yes.

Mr. BUYER. Is he an independent man?

Mr. DEGUERIN. He told that he was a Houston Fire Department arson investigator, that he had been appointed to an independent panel to examine the fire and whether it was set deliberately or accidentally.

I said, I'll cooperate in any way you will want. I'll come back up to Waco. I'll tell you what I saw on the inside and how the place was a tinderbox and so forth and agreed to do so. And I called Jack Zimmermann to tell him that I'd been contacted and maybe Jack ought to come up with me, because he was there also, to be interviewed.

Jack said, wait a minute. This guy Paul Gray was with the ATF. I think I've got his card.

Mr. BUYER. Is it true, is his wife employed also by ATF?

Mr. DEGUERIN. I understand his wife is employed in the Houston office of the ATF. I called the Texas Rangers and told them, wait a minute, I've been contacted by this Paul Gray. Should I talk to him? They said, we don't know anything about him.

Mr. BUYER. I'm not familiar with Texas. Is the word "independence" any different in Texas?

Mr. DEGUERIN. No. I think it was clearly misleading.

Mr. ZIMMERMANN. Mr. Buyer, I have that card here if you want to see the original of that card.

Mr. Gray had investigated a case that I had been involved in during the 1980's and the name struck a bell. And his card, which you really can't see on that blowup, that shield says, Special Agent, U.S. Department of Treasury.

And that's when I informed Mr. DeGuerin that not only had he been—his office had been at—that address up there and phone number is the ATF Office. He officed there from 1982 to 1990. His wife was then at the time of the raid and is currently, when he did the arson investigation of this fire on the 19th, was still employed, and he had been in attendance at the funeral of one of the slain ATF agents.

Mr. BUYER. Did either of you let him know that you were on to him, that he really wasn't——

Mr. DEGUERIN. Yes, I did. I called him back and told him that I had talked with Texas Ranger Captain Cook, and Captain Cook

had advised me not to talk to him without a Texas Ranger being present and that I wouldn't do so and that I knew that he had been assigned to the ATF for many years and I didn't feel like he could be impartial and an independent investigator and that I wouldn't meet with him.

He told me originally that his report was due out the following Wednesday. And, as I understand it, he then sped that up and got the report out on Monday before we were able to reveal that it was really not an independent arson review.

Mr. BUYER. At the—Mr. Zimmermann, your testimony describes some misinformation coming from the Department of Justice after the fire. Could you summarize? I heard you say that. Could you please tell me what you are referring to?

Mr. ZIMMERMANN. There were a number of things that bothered me, because I knew that they weren't true and yet they—the public statements continued to say them.

For example, it started with the 10:30 in the morning briefing, and it was a combination at the beginning of both the ATF and the FBI. They said that the ATF did not alert the press before the February 28 attack. Well, you know now you've heard testimony that there was, in fact, contact by a spokeswoman for the ATF. They said that they publicly announced that the ATF did not lose the element of surprise. I think that that has been well established in these hearings and by their own report.

They said that two cultists confessed to starting the fire on April 19. And, of course, that made everybody feel better, because as the Nation watched all the children and women and old men burn up there, if they knew that the cultists had started the fire themselves they'd feel better about that. So they announced they confessed when there was never any confession to that.

Mr. BUYER. You are bringing out a lot of interesting statements. I want to conclude, but were either of you guys interviewed by Treasury or Justice on those reports?

Mr. DEGUERIN. No.

Mr. ZIMMERMANN. I was not interviewed by either of those independent organizations.

Mr. BUYER. I didn't mean to interrupt your answer. Would you please continue, Mr. Zimmermann, and that will conclude my time.

Mr. ZIMMERMANN. They kept putting out the word that the April 19 operation was a nonaggressive action and after the public saw that tank knocking into someone's door, I think that even they began to call it an assault. They said that the Justice Department couldn't wait even another day because the children were being beaten during the siege.

Of course, Dick DeGuerin and I had been in there 2 weeks before, and we just could not believe that somebody would say that, because we'd seen those children. We talked to them. We saw how they looked. And, of course, the FBI quickly corrected that. That came out of the Justice—main Justice. And the FBI said, look, we just gave them the 1992 reports. There have been investigations by Child Protective Services and found insufficient evidence to go forward.

They said it was a planned mass suicide. They kept putting that word out. It was a planned mass suicide. And, of course, Dick and

I had talked to those people about a planned mass suicide, and every time we talked to them we were assured there wasn't.

I'm telling you what. I was supposed to be the last guy out on the surrender plan, and if there had been even the slightest inkling in our minds that they were going to burn up the building or blow it up, I wouldn't have agreed to be the last guy out.

And also nine people did survive that fire, and they escaped that fire. If there was a mass suicide plan, why did those nine leave? They're still very devoted to David Koresh, and they escaped. You know why they escaped? Because they were near an opening, they were near a window, and they got out. The other people were trapped and couldn't get out.

And when the bodies were found, David Koresh and Steve Schneider and another person were found totally separated from everybody else. Not exactly a mass suicide scenario.

They were putting out the word that the people—they—the Branch Davidians murdered people to keep them from escaping. Of course, there's no truth to that at all. There's no evidence to support that.

And at the time that I wrote my written opening statement that you have in front of you—I wrote that in May 1993, when everything was really fresh, and my memory was really fresh. I wrote that back then and at that time the autopsies had revealed maybe a dozen or so gunshot wounds. I think when they got through it was up to 17 or 18.

Well, there were 80-some-odd people in there, and Dick and I had talked to them. We knew that six people had been killed by the ATF on February 28. They'd better have bullets in them on autopsy. And we knew some other people had been wounded inside, that is Branch Davidians, so they ought to have had bullets in them.

So there may have been a couple of people that, rather than go through the fiery death and the painful burning to death, may have, if there was a weapon there, decided to put their relative or their friend or themselves out of misery, but it certainly wasn't a murder situation.

Mr. ZELIFF. Are you going to finish with that?

Mr. ZIMMERMANN. I have about one more, sir.

Mr. ZELIFF. OK. Are you answering the question that he asked?

Mr. ZIMMERMANN. I'm answering the question about the misinformation program that we were given.

Mr. ZELIFF. As long as you are answering the question, you can proceed.

Mr. ZIMMERMANN. The next one was, of course, that David Koresh was not working on his "Seven Seals" project, that it was a sham. They actually held a briefing on the day of the fire, and if you look at the tape it says, we know they were lying to their lawyers.

Well, we know now—Dick has gone into that. You'll talk to the next witnesses, and they will give you a copy of that "Seven Seals," the first seal transcribed.

And, lastly, they said that the Government was—had gone in on February 28 and April 19 because of the child abuse occurring. And I think that we can probably let that go by saying that will prob-

ably never be proven to anybody's satisfaction that that was occurring on—before February 28 and before April 19. And neither one, even if it were, justifies Federal law enforcement launching military attacks, because they have no jurisdiction over that matter anyway.

Mr. ZELIFF. Thank you very much.

The Chair now recognizes the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. Zimmermann, are you representing any of the Branch Davidians in lawsuits against the Government?

Mr. ZIMMERMANN. No, sir.

Mr. CONYERS. Mr. DeGuerin.

Mr. DEGUERIN. No, sir, I'm not.

Mr. CONYERS. All right. One of you made the statement that if we had had 10 more days you felt that Mr. Koresh would come out.

Mr. ZIMMERMANN. I did.

Mr. CONYERS. What do you base that on?

Mr. ZIMMERMANN. We were called—we called—we were allowed to call, by the FBI, on April 14, and they told us that that waiting period in the Book of Revelation had been answered and that David Koresh was to decode the "Seven Seals" in writing. That would be ending that waiting period. And we told him, send it out to us.

He put it in writing. He signed it. We gave it to the FBI. He told us it would take him 1 to 2 days per seal. He had finished the first seal and was working on the second one. So that would be about 10 days, sir.

Mr. CONYERS. Well, there had been so many disappointments with Mr. Koresh's agreements to cooperate that we had had a little bit of a problem there as far as I am concerned and as far as ATF was concerned.

Now, Mr. Zimmermann, is it true that in 1987 David Koresh and his mighty men, including Stephen Schneider, who has been described by one of you as a peaceful man, engaged in a gun battle to settle a dispute with George Roden over who would be the leader of the Branch Davidians?

Mr. ZIMMERMANN. I don't believe that's an accurate rendition, sir. And can I back up——

Mr. CONYERS. There was not a gun battle?

Mr. ZIMMERMANN. No, the way you described it.

Mr. CONYERS. Wait a minute. Engaged in a gun battle to settle a dispute with George Roden. Did that happen? No, I don't need explanations. Yes or no.

Mr. ZIMMERMANN. No, I'm not aware Steve Schneider was even—he was in Hawaii at that time, sir.

Mr. CONYERS. What about David Koresh? Was he in Hawaii?

Mr. ZIMMERMANN. No, sir.

Mr. CONYERS. I see. OK.

Isn't it also true after that incident that Mr. Koresh did not peacefully surrender to the sheriff but was, in fact, arrested at gunpoint?

Mr. ZIMMERMANN. No. That's wrong, too, sir.

Mr. CONYERS. I see. OK.

Now, we have some statements that indicated that there was—about the fires that were begun, and I have presented to you at the table the electronic surveillance tapes or some of the transcripts from them.

The import is that it strongly supports the fact that some of the Davidians were themselves starting the fire. These are electronic surveillance tapes transcribed from April 19, and they establish that the Davidians started the fires. These excerpts show that Davidians were pouring fuel inside the compound during the tear gas operation.

The full transcripts reveal that the Davidians discussed getting fuel ready and pouring it, the need for more fuel, discussing whether it was poured in the hallways, spreading the fuel, where the fuel should be spread, and whether to light the fire and keep it going.

I bring to your attention selected comments from unidentified males: "You want it poured?" Another unidentified male: "Pablo, have you poured it yet?" Another voice: "Things are poured, right?" Another comment: "Need to get the fuel out."

Another comment: "I need a gas mask." Unidentified female. Unidentified male: "I need a gas mask." Another unidentified male: "Got any fuel?" Unidentified male: "We need fuel." Unidentified male: "Fuel over here." Unidentified male, 6:10 a.m.: "Don't pour it all out. We might need some later."

6:12 a.m., unidentified male: "You've got to get the fuel ready." Another unidentified male: "I already poured it. It's already poured."

On the page after it, unidentified male, from the transcript: "They got some fuel around in here?" Unidentified male: "Yeah, they even poured it already." Unidentified male: "Poured it already." Unidentified male: "He's got it poured already."

6:19, side B, there is no time indicated: "Shall we light the package now? Yeah, OK, light it."

Now, these are——

Mr. ZELIFF. The gentleman's time is expired.

Mr. CONYERS. These transcriptions don't indicate that anybody but the Davidians poured the fuel that set fire to this compound.

You nod your head, Mr. DeGuerin.

Mr. DEGUERIN. Yes, sir, I'm familiar with that. And it concerned me when I was being told by the FBI that they thought that they had evidence that the Davidians started the fire, and so I questioned the survivors that I talked to in the jail, the ones that got out. They explained to me that they were pouring fuel and that they were making Molotov cocktails to throw at the tanks.

If you notice, that pouring of the fuel takes place or the conversation about that takes place in the early morning hours, 6 and 7 o'clock in the morning. The fire didn't start until right around noon. It's questionable about whether it started just before or just after noon, but those conversations about pouring the fuel, I believe, had to do with preparing Molotov cocktails to throw at the tanks. Now, they never did throw Molotov cocktails at the tanks.

Second, as all of the survivors were unanimous in saying that they did not start the fire and knew of no plan to burn the place down——

Mr. CONYERS. Well, "Let's keep the fire going." That doesn't sound like pouring Molotov cocktails. And I understand——

Mr. ZELIFF. The gentleman's time is expired.

Mr. CONYERS. I think you are a defense attorney but——

Mr. ZELIFF. Mr. Mica from Florida for 5 minutes.

Mr. DEGUERIN. I can answer that.

Mr. ZELIFF. We can get back to it. This thing can go on all afternoon if we let it.

Mr. MICA. Thank you, Mr. Chairman. I just have to take 30 seconds here and say that, ladies and gentlemen on the panel and the people that are watching this proceeding, that I am absolutely personally outraged at some of the comments I have heard from the White House and the administration—I am so glad Mr. Coble spoke to this earlier—that Republican participation in these hearings are some effort to discredit law enforcement or attack law enforcement or that I personally have some hidden agenda in this. And I am just absolutely sick and tired of it, and I really resent these people making those comments about me personally.

The other thing is we have a responsibility—and Mr. Zimmermann, you talked about it—a responsibility to find out what happened here, how 80 people—we don't count Koresh—in this died and 4 ATF agents and many other wounded.

Gentlemen, can you cite me any other instance in the history of this country where in a Federal action there were this many people killed by a Federal action?

Mr. ZIMMERMANN. I don't think there is one, and I don't think there is another one that ever had American tanks used against American citizens.

Mr. MICA. Can you respond, sir? Have you ever heard of anything like that?

Mr. DEGUERIN. I have never heard of that, and I have never heard of tanks being used against American citizens in their own country.

Mr. MICA. We have tried to look at each thing, and we have had two of the fairest chairmen in the House of Representatives. These individuals have bent over backward to try to bring this evidence out. And, if anything, the administration and other people have tried to obstruct these proceedings, even from the very beginning. And you cited that, Mr. Zimmermann, have you not? You were never—you were never called to participate in any of these, is that correct, for the record?

Mr. DEGUERIN. That's correct.

Mr. ZIMMERMANN. That's correct.

Mr. MICA. These reports. You know, I wanted to get into personnel questions. I had about 12 minutes yesterday to discuss the personnel. Turn the chart over and show the personnel responsibility here.

And, Mr. Zimmermann, you pointed it out, and we heard it for several days. Rodriguez blamed Sarabyn and Chojnacki, and Chojnacki talked about Hartnett, and Hartnett blamed Noble. And then we got up to Noble, and he said he wasn't in charge, that maybe it was Simpson. And then we asked—we heard from Altman, and Altman said that, well, it wasn't his watch. It was Bentsen. And Bentsen blamed Reno.

What did the American people think when they see this? Is this the chain of responsibility? Nobody has ended up being fired; is that correct?

Mr. ZIMMERMANN. That's my understanding.

Mr. MICA. A couple——

Mr. ZIMMERMANN. They were fired and rehired.

Mr. MICA. Yes. Fired and rehired. But that's some of the questions here that need to be raised. What kind of a message you think this sends to the American people?

Mr. ZIMMERMANN. When I have given speeches on this subject around, the thing that bothers the mainstream—with Kiwanis Clubs, accountants groups, breakfast groups that I have spoken to—the thing that bothered them the most is they are worried that this will happen again, because the same people were still there.

Mr. MICA. You were on your way, you told us, to resolving this issue, and you said you were well on your way resolving, and you were riding in north Texas—I read your statement last night. They delayed these proceedings for what, Passover was it? They were celebrating Passover, and that's when our Federal officials made the decision to do this, is that correct?

Mr. DEGUERIN. I don't know exactly when the decision was made. I know there was a process going on. I know that from reading the Justice Department report.

Mr. MICA. Did you see or hear of any reports of children being molested while you were in the compound?

Mr. DEGUERIN. I saw all of the children. I saw the parents. I saw the rooms where they were living. I saw their living environment. And I didn't see any children that I thought were being abused.

Mr. MICA. One of the things that concerns me is, again, the Government's use—and we have a whole bunch of scenarios of mistakes. Everything in here, in all these reports, everyone says the Government screwed up, isn't that correct?

Mr. DEGUERIN. Yes, sir.

Mr. ZIMMERMANN. Well, not in the Justice Department. That's a whitewash.

Mr. MICA. All right. But they pointed fingers, but nobody took responsibility.

In the report, the Department of Justice report, I read this report, and it describes the condition of the children. There were over—there were 25—you can't tell exactly how many children there were, because they were incinerated beyond recognition, but we will give or take a few. Somewhere in the neighborhood of 25 children incinerated.

Audrey Martinez was buried alive inside the bunker. She died of suffocation. She was identified from dental records. Thirteen years old.

These are mostly Doe because they couldn't be identified—Doe 67–2, 7- to 8-year-old boy buried alive, suffocated in bunker.

Doe, a 6-year-old girl suffocated inside bunker.

[See pp. 127 to 128 for additional information concerning the above testimony.

They used CS gas. What do you think about the decision to use this and these children that were incinerated or suffocated by an action of the Federal Government?

Mr. ZIMMERMANN. Can I tell you my experience with CS gas in answer to your question, sir?

Mr. MICA. Tell me your experience, sir.

Mr. ZIMMERMANN. All Marine lieutenants go through the CS gas chamber to teach you how to use your gas mask and to gain confidence that that gas mask will work. So I've been through that.

And the process is, you go into an enclosed area. They pop the CS gas grenade. You have your mask on, you take it off and you count to 10 or state your name enough so you can inhale a small amount. Then you put your mask back on. Put your hands over the filters. Clear your mask by blowing outward. It blows the gas out, and then you are able to breathe.

Mr. MICA. But even their report, didn't their report say that gas masks don't fit on these babies?

Mr. ZIMMERMANN. That's correct.

Mr. MICA. Didn't they know that?

Mr. ZIMMERMANN. They should have known.

Let me continue, if I can. When you come out of that gas chamber, and only having been exposed for a matter of seconds, your eyes burn, your nose burns and all mucous membranes are affected.

Grown, healthy, cream-of-the-crop-of-the-United-States youth, Marine lieutenants, are hurting when they come out of that gas chamber.

In 1980, I was taking a battalion to Norway on a reserve active duty joint NATO operation. We had to go through that chamber because the Norwegians were going to use gas as part of our training. I was going to be lead from the front. I was going to be the first one through a temporary gas chamber we set up at Ellington Air Force Base in Houston, TX.

To make a long story short, I take my mask off, they popped two grenades, doubling the concentration that it should have been, and I was choking to death. I couldn't see. I was disoriented. I didn't know where I was, and I was a major of the Marine Corps. I barely got out, got out to the fresh air. And I'm sitting there. My eyes are burning. I'm vomiting. I'm kneeling over. I'm in extreme pain.

And all my troops are lined up there, and I know they were resisting the urge to laugh at the old man doing that and also simultaneously thinking, "I ain't going in there."

Well, we got it fixed. The point I'm getting at is, it is terribly debilitating. CS gas is terrible. And I know it's still that way because both my grown children at the time Waco was going on were lieutenants at Quantico. They had gone through the gas chamber. My daughter just went through again on her annual training last week.

Now, you're going to have people that testify on gas. Please, if anybody comes in here and tells you that CS gas is not torturing children, ask them to do one thing. Tell them—ask them this: Ma'am or sir, will you get in a car with me and drive 35 miles down to Quantico? On the Marine base at Quantico, we will put a videocamera in the car with you, take you down to that Marine gas chamber, put on your gas mask. Let us pop a couple of gas grenades in that chamber. Then you take that mask off, and let's videotape you for just 5 minutes in that chamber without a gas mask.

See if any of them will take that challenge. They won't, because you'll choke to death in that period of time with the wrong concentration.

I believe that using CS gas against infants, against old people with respiratory problems—there were 67-year-old men in there, and there were young children. That's torture. And I can just see those kids barfing, vomiting, screaming, because you can't possibly have a gas mask that will fit a little kid.

At best, I think one of the reports said a survivor said they had taken—to try to help them, they had taken a washcloth and put water on it to try to put it over their face so it wouldn't burn.

Mr. ZELIFF. The gentleman's time is expired.

And, in fairness, just in case I might have shut you off from trying to finish up, Mr. Conyers, if you could just take 30 seconds and try to wrap up.

Mr. DEGUERIN. I think that the point I was trying to get to, Mr. Conyers, is that when the discussion is of—keep the fire going must have had to do with either the Coleman lanterns which they were using for lighting or for the butane they were using for heating, but not for starting a fire, because it doesn't coincide with the start of the fire.

Mr. CONYERS. Were you there?

Mr. DEGUERIN. No, sir.

Mr. CONYERS. Thank you.

Mr. ZELIFF. OK. The Chair now recognizes Mr. Schumer from New York for 5 minutes and then immediately after his 5 minutes we will break for a vote and come back here. I think it's one vote, one 5-minute vote. We will come back 5 minutes after the vote.

Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman.

And, first, I want to say both Mr. Zimmermann and Mr. DeGuerin, I admire your abilities as defense lawyers. You are doing an excellent job doing what defense lawyers do, which is to defend the people they represent to the best of their abilities.

But I have real problems with some of these—with many of the statements. Just one, Mr. Zimmermann, we will have experts later talking about gas, and there is no record of CS gas, which is simply the mildest form of tear gas. Mr. DeGuerin said not tear gas but CS gas. But we're going to talk about gas later.

What I want to talk about is not your impressions of other things from talking to other people, who shot first, what the gas is. That's really not what is material here. What is material here is your involvement in the negotiations. That is something you were firsthand involved in. Your testimony on that is what would be admitted in a court of law, whereas the other stuff would not.

And my point—I know you stated, Mr. Zimmermann, that he was just about ready to come out and some—I think you used the term faceless Washington bureaucrat blew the deal.

Mr. ZIMMERMANN. Only because I don't know who made that terrible decision.

Mr. SCHUMER. You don't know if he is in Washington or Houston or on the field either, do you? What made you choose Washington?

Mr. ZIMMERMANN. Can I explain that, because I have——

Mr. SCHUMER. Just, please, yes or no. What——

Mr. ZIMMERMANN. Well, you asked me what makes me feel——

Mr. SCHUMER. I am trying to use my time.

Mr. ZELIFF. I think you ought to at least——

Mr. SCHUMER. Are you going to give me extra time, Mr. Chairman?

Mr. ZELIFF. Did you ask him a question?

Mr. SCHUMER. Yes, and I want him to answer it my way.

Mr. ZIMMERMANN. I'm not going to answer it your way or any other way except the truth. You want the truth.

Mr. SCHUMER. Then tell me how you knew it was from Washington.

Mr. ZIMMERMANN. Because—let me tell you why. Because those Special Agents in Charge in Waco are honorable men. Jeff Jamar went way out on a limb to let the two of us go in there. Bob Ricks was straight with us all the time.

Mr. SCHUMER. Just reclaiming my time, sir. Jeff Jamar said he made the decision himself, that no one in Washington made it. Do you doubt his word? He will tell us that when he comes.

Mr. ZIMMERMANN. I think——

Mr. SCHUMER. Do you doubt his word? Yes or no.

Mr. ZIMMERMANN. I would doubt that.

Mr. SCHUMER. You would. OK. Even though he was an honorable, courteous individual.

Let me just say you two gentlemen, also, it was true, came in on the negotiations 30—you two gentlemen came in on the—bells, bells, bells. You two gentlemen came in on the negotiations approximately a month after they had begun?

Mr. ZIMMERMANN. That's correct.

Mr. SCHUMER. Isn't that correct, you, too, Mr. DeGuerin?

Mr. DEGUERIN. Yes, sir.

Mr. SCHUMER. And in that 30 days Koresh had lied repeatedly to the agents. On April 2, he states that it's a fact he's coming out if the tape is played. The tape is played on local Waco TV on CBN, and he doesn't come out.

On March 7, he says he won't be that long. Then on April 2, he says he's going to come out right after Passover. Doesn't come out. Finally, on April 15, Mr. Schneider says they are going to come out after the "Seven Seals" but admits that Koresh lied about coming out on March 2. Those are his words on the tape, that Mr. Koresh, his associate, his chief lieutenant—or you don't like the term chief lieutenant. Mr. Schneider, who is his—one of his devoted followers and acolytes says that Mr. Koresh lied.

So what we have here is lie after lie after lie after lie by Mr. Koresh, a man who we know has violated Federal laws, who has abused children. And all of a sudden on April 15, we know—you somehow know that he is telling the truth.

Well, I have real problems with that. I think most people would have real problems with that, because his pattern was not to tell the truth. And, in fact, further, he said, well, he will come out not within 5 minutes but after he finished doing his writing on the "Seven Seals."

And when asked, Mrs. Schneider—I forgot her first name. It begins with a J.

Mr. ZIMMERMANN. Judy.

Mr. SCHUMER. Judy. When Judy Schneider was asked on the tape how long it would take to transcribe his interpretation of the "Seven Seals," she said about a year. Then she later said to—a little bit later, she said, well, if I was given a laptop computer, it would be somewhat shorter than that. Never said how much shorter.

So it is certainly clear, Mr. Zimmermann, that even if the FBI had said yes, that it would take some time for him to do his work on the "Seven Seals;" isn't that correct? He wasn't going to come out in 5 minutes or that day or the next day.

Mr. ZIMMERMANN. No, he was going to come out at—we told them at 2 days per seal, that one that was finished, it would be about 12 days. Mr. Jamar said, that's fine. That's good.

Mr. SCHUMER. Twelve days.

Mr. ZIMMERMANN. Yes, sir. He agreed with that.

Mr. SCHUMER. OK. We will ask Mr. Jamar that because I think Jamar's interpretation, you call an honorable person, we won't see him—is he on the B panel or C panel? We are not going to see him till later this evening, but Mr. Jamar's interpretations are quite at variance with yours as to what happened.

And I would simply say to you that someone like Mr. Koresh who lies and lies and lies and has three times promised to come out and not come out, and if you have to make the decision whether to say, OK, well, let's give him another 12 or 15 days so he can write his "Seven Seals"—and let us say that in hindsight we know what has happened, but just let us say they gave him those 12 and 15 days and the compound was burnt internally by Mr. Koresh and many, many children were killed, we would be and you would be, as a good defense lawyer, excoriating, excoriating the FBI and everybody else for waiting so long.

You would make the argument, you would make it much better than I ever could, Mr. Zimmermann. You'd say he lied on March 2. He lied on March 7. He lied on April 2. He lied on April 15. And all of a sudden, they wanted to believe him on April 15 and give him 2 weeks.

Mr. ZELIFF. The gentleman's time has expired.

Mr. SCHUMER. That doesn't make any sense.

I would just like Mr. Zimmermann to respond, because I feel that he's entitled to, if that's OK with you, Mr. Chairman.

Mr. ZELIFF. That's fair.

Mr. ZIMMERMANN. Thank you, Mr. Congressman.

First of all, when the lawyers got involved, approximately at the very end of March, in my judgment there was never a promise of a specific date, and there never was a broken promise by Mr. Koresh. That needs to be clarified. Once Dick DeGuerin became his lawyer, Mr. Koresh never gave a false promise to do anything that he didn't do.

Second——

Mr. SCHUMER. Mr. DeGuerin gave him truth serum? Is that true?

Mr. ZIMMERMANN. You asked me to tell you my observation, sir. The dates you gave were wrong, OK. All the dates—he never said on April 2 that he was going to come out at any particular time,

because Mr. DeGuerin and I were involved by April 2, so I know that's wrong.

Now, there were some other promises before that, but you have to put it in context. Until there was somebody he trusted, he didn't trust those people out there. But once Mr. DeGuerin became involved, that's when it happened.

Now, in response to your other situation, that's a hypothetical that I would have to have a crystal ball that's more clear than mine is.

Mr. ZELIFF. The time is expired. We now will take a recess until 5 minutes after this vote coming up.

[Recess.]

Mr. ZELIFF. The joint oversight hearings on Waco will now come to order. The Chair recognizes Mr. Schiff from New Mexico for 5 minutes.

Mr. SCHIFF. Can I wait a moment until the witnesses are back, Mr. Chairman?

Mr. ZELIFF. OK. Get them settled in.

Mr. SCHIFF. Gentlemen, I have been very, very critical of the presentation earlier in this hearing of the victimization of Kiri Jewell, because as serious as child rape is, of course, the Bureau of Alcohol, Tobacco and Firearms was conducting a firearms law investigation and search, and the issue of Mr. Koresh's depravity is not what they were investigating or going to serve a search warrant for.

And I think that that testimony was put into this hearing to take newspaper headlines and other media attention away from a lot of the testimony about the law enforcement participation in the raid. But I don't mean to imply by that that Mr. Koresh had no involvement in this whole situation. Obviously, he did.

And in all of this discussion of the negotiations, I have this question: After the raid failed—let's pick it up from there—and the siege began and the negotiations are going, we know that we have four dead Bureau of Alcohol, Tobacco and Firearms agents, and we believe we had six dead members of the Branch Davidian sect.

Wasn't it time for the people inside to come out and at that point make their case in court? In other words, how would they have any justification for not coming out and allowing this matter to go to the courts when a number of people have died in the raid situation?

I will go to whoever wants to respond first. Mr. DeGuerin.

Mr. DEGUERIN. Legal justification for waiting, no. There was no justification for it. My plan, what I wanted to do was to walk out with David Koresh and have all the rest of the people come out. My whole reason for going in there was to go get my client and take him to court where I knew how to work.

And what we tried to do, Jack and I together, was to get those on the inside, not just David Koresh, but all of them to reconcile their beliefs with the law. They believed that their beliefs, their religion was paramount and superior to the law and, as you know, it's not.

Mr. SCHIFF. Let me interrupt because my time is limited here. Very quickly, did the FBI impede anyone from leaving who wanted to leave?

Mr. DEGUERIN. No.

Mr. ZIMMERMANN. No.

Mr. SCHIFF. All right.

Quickly, gentlemen, because we are going to get into this in other testimony. Mr. Zimmermann, you talked about CS gas.

Mr. ZIMMERMANN. Yes, sir.

Mr. SCHIFF. You do know the FBI will say that of all the written reports on the use of CS gas, there is no established lasting effects to anyone in the use of CS gas. That's what they are going to say.

Mr. ZIMMERMANN. That's why I asked you, sir, get somebody that says that, say, look, will you drive down to Quantico with me, let me video you in that gas chamber for 5 minutes without a gas mask? And if he says he will, take him up on it, do it.

Mr. SCHIFF. Finally, my question, Mr. DeGuerin, you were asked about the fire and what started the fire. Do you have enough information at this point to have an estimation of what did cause the fire?

Mr. DEGUERIN. I think it was probably started accidentally by the lanterns being crushed or turned over. They were using lanterns, Coleman lanterns, with liquid fuel for lighting, or it started from a spark or it started in some accidental fashion. That's what I believe because—not because I want to believe that or because I have anybody to represent. I don't have anybody to represent here. I'm telling you what I saw on the inside and what the people told me, and the survivors told me that they did not start that fire on purpose.

Mr. SCHIFF. Thank you again. Let me interrupt because time is short. Thank you, gentlemen.

Mr. Chairman, I would like to yield any time I have remaining to Mr. Chabot.

Mr. CHABOT. Thank you.

As I have said consistently during these hearings, I think the real purpose of these hearings, is to find out all the facts, let the chips fall where they may, and try to avoid future loss of life, whether it be law enforcement officials or whether it be civilians. You two gentlemen have studied this case in depth and were inside the compound when others were not, and I think, you have some insight that everybody else really lacks.

I would like to ask both gentlemen, and you both can answer: What are the lessons to be learned from Waco? What should the U.S. Government learn so that we can prevent a tragedy like this from ever happening again?

Mr. DEGUERIN. Provocative force, excessive force breeds excessive violence. The use of excessive force by law officers serving a warrant is doomed to tragedy.

Now, what we saw on February the 28 was the use of far more force than was justified or necessary under the circumstances. What this committee needs to do is go back and examine the decision to use the excessive force then. That carries right through to April 19, because this atmosphere of macho—we've got to do something, we've got to bring this to an end—resulted in tanks and tear gas being used against some—if you want to put it this way—religious nuts that were holed up in a compound.

There had been no one injured, no one threatened, no one hurt for 51 days, and the FBI is to be congratulated for bringing that about. But the force that was used on April 19 again was excessive and so the real lessons to be learned—and how to prevent it, I don't know—is stopping the use of excessive force. That's my read.

Mr. CHABOT. Thank you. Mr. Zimmermann.

Mr. ZIMMERMANN. Sir, I hope that, in addition to what Dick DeGuerin has just said, that what we can learn from this is that we need to reestablish faith in our Federal law enforcement. At one time, as a defense lawyer, I can tell you the FBI was viewed as the elite of Federal law enforcement. It was the Texas Rangers of the Federal law enforcement community, if you will.

That is not the case today, and we've got to reestablish that. And the only way I think we can do it, and I'm not sure whether this oversight committee can or not, but I hope you can at least go down the road a bit, we have to establish leadership accountability. That's what the American public is concerned about. There's been no leadership accountability.

In my frame of reference, the commander, in a military sense, has responsibility and authority. He can delegate the authority, but he never delegates the responsibility. Something goes wrong on his watch, he's responsible.

Let me give you an example that pales in comparison, there is no loss of life, but a terrible thing happened at Tailhook. All right. That was not any loss of life. There was some illegality, and that responsibility went all the way to the Secretary of the Navy, and he resigned over that.

There has been no personal leadership accountability in the Department of Justice at all. And in the Treasury Department, the people who were found by their own investigators to have lied and committed crimes are still working for you and me.

Mr. CHABOT. Thank you.

I see that I am out of time, Mr. Chairman.

Mr. TAYLOR. If I may, sir. He just said something very strong. I know I am out of order. I would like to know what crime those Treasury people have been convicted of, sir?

Mr. ZIMMERMANN. Convicted of?

Mr. TAYLOR. Yes, sir.

Mr. ZIMMERMANN. Mr. Merletti testified yesterday in answer to a question from somebody on the committee or subcommittee, and I don't know who, whether or not Federal law was violated, and he said there were Federal felonies when those agents provided false statements as to their activities at Waco.

Mr. SCHUMER. Would the gentleman yield?

Mr. ZELIFF. I think——

Mr. TAYLOR. There are no felonies until you have been convicted.

Mr. ZELIFF. I would like to recognize Mr. Lantos from California for 5 minutes.

Mr. LANTOS. Thank you.

We have had a few minutes ago an absolutely mindboggling exchange between a member of this committee on the other side and the two of you which I would like to return to because it reveals either a degree of unbelievable ignorance of recent American history or sophistry of the worst type.

Let me tell you what I have in mind. We had, not too many years ago, a criminally insane, charismatic leader by the name of Jim Jones, who caused the death of about 900 American citizens, children and women, with no FBI, ATF, Justice Department, tanks or gas being involved.

Now, you were asked, the two of you, by Mr. Mica 10 minutes ago whether there is any incident in American history where American citizens were so killed, and you both claimed not to know of any such episode. He didn't seem to know of any such episode.

Well, let me give a new approach to the two theories that have been used so far. We have heard throughout these hearings that we are either dealing with a degree of bureaucratic incompetence and stupidity of incredible proportions or, worse yet, a conspiracy on the part of the Federal Government to kill American citizens.

I reject both of these notions, because I think what we have here is a pattern on the part of an insanely criminal charismatic leader in charge of a sect who has apocalyptic visions, who teaches children to commit suicide, who puts guns into the mouths of children, who is responsible for this nightmare which has unfolded on our television sets.

But for the two of you to sit there and claim either ignorance of or forgetfulness concerning the Jonestown tragedy, where planned mass suicide of American citizens unfolded involving many times the number of tragedies that we had in this unfortunate incident, and to have a member of this committee claim no knowledge of this, stretches—stretches credibility.

Mr. ZIMMERMANN. May I answer?

Mr. LANTOS. Not yet. When I am finished.

What I am suggesting to you—and I am resisting the temptation to comment on the cheap political shots about political appointees of an administration which had been in office just a few weeks when all these things unfolded.

What I am telling you is that the most plausible single explanation for this nightmare, namely the apocalyptic vision of a criminally insane, charismatic cult leader who was hell-bent on bringing about this infernal nightmare in flames and the extermination of the children and the women and the other innocents, is not an explanation that should be cast aside.

No one knows what Koresh had in mind. You don't and I don't. But if we have had any intelligence, we go back to the only other example in American history, not that far back in history, the Jonestown nightmare of 900 Americans killing themselves, finishing their lives—in many cases promising lives—because of the evil and criminal approach of a charismatic cult leader.

Now, you are saying, Mr. DeGuerin, you saw in David Koresh not a person who was insane, but a person who was deeply committed and sincere about his religious beliefs.

Well, I am sorry for you if that's what you see in him. I see in him a criminally insane, charismatic cult leader who caused the deaths of all these innocents. And I would like both of you to comment on my observation.

Mr. ZIMMERMANN. Let me let Mr. DeGuerin have the last word.

Let me comment with regard to your two theories: Gross incompetence or a conspiracy. Let me agree with you, Congressman Lan-

tos, that I have seen no credible evidence of a conspiracy on the part of either the ATF or the FBI or the Treasury Department or the Justice Department. I have seen no credible evidence of a conspiracy to harm Americans.

Mr. LANTOS. I am glad to hear that.

Mr. ZIMMERMANN. So I agree with you I have never said that. Dick DeGuerin has never said it.

Mr. LANTOS. Many have implied it.

Mr. ZIMMERMANN. Not us.

Mr. LANTOS. I am not blaming you for the conspiracy theory.

Mr. ZIMMERMANN. In fact, you know, we requested to be on a panel separate, so our credibility would not be placed against some people who have conspiracy theories. I disagree, though. I think it is an example of gross incompetence. We've already been through that. We may agree to disagree.

With regard to the question about the Jonestown matter. Maybe because I was up all night—you weren't here when the chairman began by announcing that I had a granddaughter born this morning at 4:15 in the morning. I didn't get much sleep. It was our first grandchild. Maybe——

Mr. LANTOS. I have 17, so I congratulate you.

Mr. ZIMMERMANN. Maybe I wasn't as sharp as I should be.

But I thought the question said, "Are you aware of any American law enforcement action in the United States that had this great a loss of life?" And if that was the question, which I think it was, I stand by my answer. Jonestown was not an American law enforcement action, and it wasn't a law enforcement action at all, and it wasn't in America.

Mr. ZELIFF. OK. The gentleman's time is expired.

Mr. LANTOS. Would you allow the other witness to answer, Mr. Chairman?

Mr. ZELIFF. Sure.

Mr. DEGUERIN. If it hadn't been David Koresh, it would have been somebody else.

I think the reason I'm here is to try to offer some insight into how to prevent this from happening, not to defend David Koresh or his actions. And as I see it, this ended in tragedy because there was a failure to understand that not only David Koresh but his followers had this apocalyptic vision, and the actions of the FBI in increasing the pressure and violence played right into that apocalyptic vision.

That's what I am saying about his beliefs. His belief system—whether you believe he was crazy or a child molester or anything else, his belief systems were in place and very sincere.

Mr. LANTOS. And led to this outcome.

Mr. DEGUERIN. But the point is the failure to understand that and then to work within that belief system, to try to use that belief system as I was doing, as Arnold and Tabor and Jack were doing, to try to say, well, the Bible does say you should come out. The Bible does say that the Apocalypse is not now, it's later, and, therefore, come on out and go in jail.

Like there has been a lot of good writing in jail, I said to David, and not just in jest. I said that some of the greatest writing in the

world has been done by someone who was in jail and had all the time to write.

And so what I'm saying, Mr. Lantos and members of the committee, is that we've got to understand—law enforcement has got to understand what they are working with and not just demonize and ridicule in order to justify their actions.

Mr. SCHUMER. Mr. Chairman.

Mr. ZELIFF. Yes.

Mr. SCHUMER. I have a unanimous consent request. I would just like to add into the record the tapes—the transcripts of the tapes each time that David Koresh promised he would come out and didn't, including the date of April 2, which Mr. Zimmermann said didn't exist.

Mr. ZELIFF. Without——

Mr. BARR. Reserving the right to object.

Mr. ZELIFF. State your objection.

Mr. BARR. Well, what will this be? Will this be identified as Mr. Schumer's impression of the promises that were made, because we have conflicting testimony on this.

Mr. SCHUMER. Sir——

Mr. BARR. Let me state my reservation, please, Mr. Schumer. You certainly are not shy about responding.

If it is going into the record, Mr. Chairman, as fact, then I would object to it. If this is simply a document that Mr. Schumer wants to put in that is identified as his interpretation of promises were made, then I have no objection.

Mr. LANTOS. Reserving the right to object.

Mr. SCHUMER. We don't need that, Tom.

I just want to respond, which is, very simply, these are the transcripts transcribed of the tapes. They taped the negotiations where Koresh promised to come out. It has none of my personal imprint in any way on it other than perhaps the fingerprints when I have handed over the document.

Mr. BARR. I doubt those would appear in the copies that were made anyway. If those are documents that are not identified as reaching a conclusion, then I would have no objection.

Mr. ZELIFF. Without objection, so ordered.

[Documents not received by time of printing.]

Mr. ZELIFF. Chief Heineman from North Carolina has 5 minutes.

Mr. HEINEMAN. Thank you, Mr. Chairman.

Mr. DeGuerin, I would like to go over again that April 14, that you said that there was a document.

Mr. DEGUERIN. It's attached to my statement. It's the last document in my statement. It's a letter, a handwritten letter, signed by Koresh.

Mr. HEINEMAN. Can you summarize that, please.

Mr. DEGUERIN. Well, what it says is that he has been given the task, and I suppose this was the word from God that he said he was waiting on—and, look, I'm not trying to make—pass a judgment on that. Some people truly believe they get the word of God. Some people truly believe they speak to God. Billy Graham is one of them.

Mr. HEINEMAN. In 25 words or less.

Mr. DEGUERIN. But he said that he'd received now the message that what he had to do was to write his interpretation of the "Seven Seals." It's not a long book and a long manuscript, but to dictate it, and then he would come out and go into the criminal justice system. And the reason that that was such a revelation, such a change in what had happened before, was he was giving the religious arguments for doing that.

Mr. HEINEMAN. Why was he doing this? He gave that to you. You say you passed that on to the FBI?

Mr. DEGUERIN. Yes.

Mr. HEINEMAN. And for what purpose?

Mr. DEGUERIN. You mean what was his purpose in doing that?

Mr. HEINEMAN. Yes.

Mr. DEGUERIN. I think it was because he believed it, and he said, and all the rest of the people in Mount Carmel at the time said they were overjoyed that now this message had been received.

Now, that's fine with me. I didn't really appreciate the religious significance of it, but Tabor and Arnold, please ask them about that. They did and can tell you how significant it was within the belief systems.

He had written two letters a couple of days before that leading up to it. He—that is, Koresh—used the religious arguments in this letter for why he had now seen that the scriptures told him to come out. They based their life on what the scriptures said.

Mr. HEINEMAN. At some point in this transaction between him giving you the letter and you passing it on, did the Texas Rangers fit into this at all?

Mr. DEGUERIN. Yes.

Mr. HEINEMAN. Can you tell us about that? I know you mentioned it before, but I would like to be a little more clear on that.

Mr. DEGUERIN. I wanted the Texas Rangers to be doing the investigation. I wish I could say I was responsible for that, and at one point there was some dispute over whether the ATF would be involved in the investigation once a surrender occurred. I talked to several people about that, and I made it known that I thought that would be a stumbling block and I wanted the Texas Rangers to be there.

What eventually was agreed to was that the Texas Rangers would conduct the investigation. There would be a Texas Ranger present at the surrender and——

Mr. HEINEMAN. When was that surrender supposed to take place?

Mr. DEGUERIN. We didn't have an exact date.

Mr. HEINEMAN. Was it supposed to happen that day?

Mr. DEGUERIN. No.

Mr. HEINEMAN. You did mention at some point that you and Koresh were going to come out and Mr. Zimmermann was going to bring up the tail end of that.

Mr. DEGUERIN. That's correct.

Mr. HEINEMAN. Did that have anything to do with that letter coming forth and the people's jubilation?

Mr. DEGUERIN. Well, if I understand the question, no, there was not a direct relationship with that, but the letter was the turning point in now Koresh said, "I'm coming out. Here's when I'm going

out. It's not an exact date, but it's as soon as I complete the manuscript."

He was working on the manuscript. We know that because we got it after the fire. And it was a real turning point in what he said. I—I thought it was so important that I immediately gave a copy of it—this is attorney-client privilege stuff—immediately gave a copy of it to the FBI and told them what I thought about it, and even talked to Tabor and Arnold in the following days and called Jamar and told him how significant I thought it was and that Tabor and Arnold were saying it was significant.

So I thought once we received this letter I could quit worrying about when he is going to come out and start worrying about the trial and getting prepared for trial.

Mr. HEINEMAN. OK.

Now, let me just make reference to that photo you see on the wall there relative to the ATF arriving at the scene, and you've made mention of that, and they appear to me—and I think there is no question—that they are in a defensive position at this point.

Mr. ZIMMERMANN. They appear to be in a position where there's fire exchanging—being exchanged, yes.

Mr. HEINEMAN. Right. Now, that would—there is nobody near the door, so apparently something happened from the time they left the tent, the canvas over the trucks to the point where they took up a defensive position.

Has that gone without an opinion during the trial?

Mr. ZIMMERMANN. No. Well, I can give you the two conflicting ones.

The Government's position was—is when the two agents came up to serve the warrant and Mr. Koresh closed the door, gunfire erupted from the inside through that right-hand side of the door to the extent that it bowed it out backwards, and one man was hit in the hand or finger or something, and then they returned—then the ATF returned fire.

Mr. HEINEMAN. So then it came out in trial that the gunfire emanated from inside the building?

Mr. ZIMMERMANN. That's the only testimony there was, because the defendants in that trial didn't testify and, of course, I was not allowed to give any testimony about what someone else said because of the rule against hearsay. So the information I have imparted to you today and that Dick has is new.

Mr. HEINEMAN. The point is that gunfire came from inside the building through the walls.

Mr. ZIMMERMANN. Through the door, not through the walls. Through the door.

Mr. HEINEMAN. Through the walls.

Mr. ZIMMERMANN. Sir?

Mr. HEINEMAN. Gunfire came from inside that building through the walls, and I think we, probably all of us and tens of millions of people across this country, had seen that, had seen that probably on the 6:30 news on February 28 when one of the ATF agents backed away from that window that I surmise is a window on the upper left-hand corner.

Mr. ZIMMERMANN. Right.

Mr. HEINEMAN. Came around to the side of that window, and we saw shots coming from the inside.

Mr. ZIMMERMANN. Absolutely, because we were in that room and we saw both entry and exit holes in that wall up there. I'm sorry, I thought you earlier were talking about the initial flurry.

Mr. ZELIFF. The gentleman's time has expired.

Mr. ZIMMERMANN. If I can finish that answer, please.

Mr. HEINEMAN. Yes, please.

Mr. ZIMMERMANN. When we interviewed people and walked through that area up there, it was clear that what you see on the video where they break and rake, he knocks the glass out, throws in a grenade, a concussion grenade, and then they come inside, and then he started shooting. By his own testimony, he sprayed the area and he hit somebody back behind one of those walls.

We talked to that person. His name was Scott Sonobe. And he said, "I returned the fire." There was an exchange in there, and then other agents came in there and started shooting, and one fellow was wounded, and in the back corner we could see the bloodstains, and there was an exchange. Clearly rounds were coming from the inside out on that exchange, and we don't know who hit the man still out on the roof. It could have been the agent who was shooting back, it could have been Mr. Sonobe, we just don't know. And we probably will never know.

Mr. DEGUERIN. Clarification. It was not that window, it was a different side of the building, not that window. That picture doesn't show it.

Mr. HEINEMAN. I stand corrected. Thank you, sir.

Mr. ZELIFF. OK. Mrs. Collins from Illinois, for 5 minutes.

Mrs. COLLINS of Illinois. Thank you, Mr. Chairman.

I yield to Ms. Slaughter of New York all of my time.

Ms. SLAUGHTER. Thank you very much, Mrs. Collins, for yielding to me.

Mr. DeGuerin, would you remind me for just a moment the date at which David Koresh told you he was relieved and everybody was happy that they didn't have to go through Armageddon.

Mr. DEGUERIN. April 14.

Ms. SLAUGHTER. On April 13, I think they mention here that the negotiator talked about reading by candlelight, and Mr. Zimmermann said that every room had a Coleman lantern. Is that about correct, about the same time?

Mr. ZIMMERMANN. Yes, ma'am.

Ms. SLAUGHTER. And it appears here in conversation that your client, Mr. Schneider, believed that he could live in fire, walk through it, and come out surviving.

Mr. ZIMMERMANN. I think he was quoting there a biblical text, ma'am.

Ms. SLAUGHTER. That he believed this?

Mr. ZIMMERMANN. I can't get inside someone's head to say whether they really physically, literally believed that, like some people believe the Red Sea parted literally.

Ms. SLAUGHTER. Well, his wife, Judy Schneider, said that in the Book of David reports that God saved Shadrach, Meshach, and Abednego from the flames of the fiery furnace, and they were in no way, either of them, afraid of dying by that fire.

Mr. ZIMMERMANN. I believe that's true, that they were not afraid to die for their religious beliefs.

Ms. SLAUGHTER. And this was on about April 13. How does that coincide with the fact that they were so relieved they didn't have to do it?

Mr. ZIMMERMANN. The last day of Passover was the 13th. Mr. DeGuerin and I came up there, and the FBI hooked us up with a telephone conversation and Steve Schneider said we would have to call back after sundown because it was the last day of their High Holy Week, and when we called them that night, Mr. Koresh did not come to the phone.

Frankly, it irritated both Mr. DeGuerin and me. I mean that was when we found the next day he was working on the first seal.

Ms. SLAUGHTER. Do you know James Trim? Are you familiar with that name?

Mr. ZIMMERMANN. Who, ma'am?

Ms. SLAUGHTER. James Trim.

Mr. ZIMMERMANN. That's not a name——

Ms. SLAUGHTER. A researcher from Dallas-Fort Worth who had the endorsement of theologian Phillip Arnold, who I believe will testify here later today, that they had a plausible theory about the start of the fire, and this was after the Passover.

On the morning of April 19, Mr. Trim postulates, Koresh ignited the fatal fire at Mount Carmel as a means of closing the fifth seal and ushering in the sixth. So he believed that this fire was necessary in order to get into the sixth seal, and that Koresh had talked to the FBI before about a wall of fire.

Did you and your client discuss this?

Mr. ZIMMERMANN. We did not discuss fire, ma'am.

Ms. SLAUGHTER. Now, Mr. Zimmermann, I think that—let's see. They are talking about being taken up by the flames of fire, that this was what they were going to do. There is nothing in any of this, and I have—you have noticed we don't have any props, and, frankly, I haven't seen either one of your testimony. I know one was probably lying there this morning, so I have no clue and I am sort of trying to go about this as we go along.

But from everything I have, there is no indication from anyone else that's covered this, including FBI investigators, that at any point Mr. Koresh had said, "This is wonderful. I'm going to finish my work here today, and we are not going to have to die."

Mr. DEGUERIN. Well, that's not correct. If you read the letter that that's attached to——

Ms. SLAUGHTER. I don't have it, so if you could maybe share that with me, that would be nice.

Mr. DEGUERIN. Yes, ma'am. It's the last exhibit.

Ms. SLAUGHTER. Are you familiar with the fact that Mr. Koresh had said to the FBI that they would again have this wall of fire which he and his believers thought that they would survive?

Mr. DEGUERIN. No.

Mr. ZIMMERMANN. No. And I don't think that that was meant the way you are implying, ma'am, and I know you are just reading from somebody else's books.

Because you see, the FBI knew about that. If those are tapes from the negotiations, we know that they didn't really think that

that was a very realistic prospect, because they made no preparations for the fire on April 19.

Ms. SLAUGHTER. What was realistic, that they would live through the fire? You don't think that is realistic, that they would live through the fire?

Mr. ZIMMERMANN. Do I personally? No, ma'am, I don't.

Ms. SLAUGHTER. Let's talk about that then. You said a while ago that Koresh always told the truth; isn't that correct?

Mr. ZIMMERMANN. I didn't say Koresh always told the truth. What I was contesting was an allegation that once the lawyers were involved that Mr. Koresh had promised to come out and had broken that promise.

My testimony is that once Dick DeGuerin started representing David Koresh and I started representing Steve Schneider, there was never a date certain given about them coming out. And the closest it came to a promise to actually come out was in that letter that's attached to his written statement, Mr. DeGuerin's opening statement.

Ms. SLAUGHTER. I believe Mr. Schumer was at least implying that the tapes that the FBI had dispute that.

Mr. ZIMMERMANN. I have not seen that April 2 tape, so I don't know what's on there, to be honest with you. I would like to see it, if that's an issue.

Ms. SLAUGHTER. I'm curious to know. I think you will agree with me that Mr. Koresh was a very charismatic man.

Mr. ZIMMERMANN. Yes, he was.

Ms. SLAUGHTER. Absolutely. In order to get 80 people to believe, first, that the men believed that they had to give their wives and daughters to Koresh, that takes a great leap of faith, doesn't it? Wouldn't you say? Would either one of you want to do that?

Mr. DEGUERIN. No, I wouldn't.

Ms. SLAUGHTER. Was Mr. Koresh——

Mr. ZIMMERMANN. I have to go on record saying no.

Ms. SLAUGHTER. You don't want to say that on the record.

Mr. ZIMMERMANN. I have to. You didn't give me a chance.

Ms. SLAUGHTER. You want to be able to go home. Is that your wife behind you?

Mr. ZIMMERMANN. That's my wife. That's my new grandmother.

Ms. SLAUGHTER. Would you like me to develop that?

Mr. ZIMMERMANN. If I were in court, I'd say, "let the record reflect."

Ms. SLAUGHTER. Well, I'm not a lawyer, so what do I know?

The thing that really astonishes me here is that both of you are so certain that this man was telling you the truth. I'm absolutely flummoxed as to why in the world you think that Koresh told people that they could walk through fire and survive——

Mr. DEGUERIN. I don't know that he said that.

Ms. SLAUGHTER. Give him all of their worldly goods, and hand over their wives and daughters, that he was going to take them somewhere.

Frankly, I've never been able to understand this whole thing. After they burned up in the fire, what next? I mean, I don't know to what end they wanted to burn up. But never mind. Let me say

this, I am baffled because I know you guys are great lawyers because Gene Green told me you are.

Mr. ZELIFF. The gentlelady's time expired.

Ms. SLAUGHTER. Tell me——

Mrs. COLLINS of Illinois. She didn't finish her question.

Mr. ZELIFF. She never asked a question.

Ms. SLAUGHTER. Yes, I did. I want to know what makes you so certain in the face of everything else you ever heard about this man that he was telling the two of you the truth?

Mr. DEGUERIN. Well, I can answer that. What he told me that I was able to confirm that was capable of being confirmed, I confirmed, and it turned out to be true.

Ms. SLAUGHTER. What was that?

Mr. DEGUERIN. Well, there are several things, and I can give you several examples.

Mr. ZELIFF. Wait a minute. Just one question, OK.

Mr. DEGUERIN. When Robert Rodriguez testified here, it was the first time I'd heard Robert Rodriguez describe the conversation that he had with Koresh.

Ms. SLAUGHTER. And he said he would never be taken again.

Mr. DEGUERIN. Koresh described it exactly the same way, except for that one.

Ms. SLAUGHTER. Right. Now, how does that jibe if he says, "I will never be taken again?" This is a truthful man, "They have had me once and they will never take me again." And the two of you believe you talked him into being taken?

Mr. DEGUERIN. What's the question?

Ms. SLAUGHTER. That's really what I am saying. Do you believe that after you negotiated with him, that he was willing to give up this thing that he had said with his followers and in the presence of Robert Rodriguez, "I will never be taken again," and you had talked him into being taken again?

Mr. DEGUERIN. First, I'm a little doubtful that he said it that way to Robert Rodriguez. Everything else that Robert said, everything jibed exactly with what Koresh said. And I talked to a number of people that were in the room. Steve Schneider was one of them. Judy Schneider was another one of them that was in the room when that conversation with David—between David Koresh and Robert Rodriguez took place.

They all described it the same way as Robert Rodriguez did except for that statement, "I'll never be taken again." There were other statements that he said to me that I found to be true. The one about Henry McMahon. He told me exactly about the statement with Henry McMahon who testified that he had given the phone or tried to give the phone to Davey Aguilera for Koresh to say, "Come on out and look at the guns if you want to." It was described the same way.

There were many others. If you want me to go into them, I will.

Mr. ZELIFF. The time has expired.

Mr. ZIMMERMANN. Am I supposed to answer that, too, sir?

Mr. ZELIFF. If you can do it in a fairly short period of time.

Mr. ZIMMERMANN. I don't want to repeat anything because of the shortness of the time, but you asked why I believed him given all

these, "walk through fire and survive fire." Let me handle this very delicately but truthfully. It's the only way I know to do it.

I'm of the Jewish faith. There are a lot of tenets of religion in other Christian—S-E-C-T-S—sects, other than the Branch Davidians, that, frankly, I find hard sometimes that other people believe, literally believe. I mean, believe to be literally true. Yet when those people who believe that tell me something, I still believe them because they are—I find them to be truthful people in other ways, and I don't—I don't assess credibilities on their religious beliefs. Everybody's religious belief is separate.

Ms. SLAUGHTER. Absolutely. But nonetheless, it seems to me you have to say that he had not told your client the truth.

Mr. ZELIFF. I think your time has well expired.

Ms. SLAUGHTER. He did not survive.

Mr. ZIMMERMANN. Not to my knowledge.

Mr. ZELIFF. Mr. Blute, 5 minutes.

Mr. BLUTE. Thank you very much, Mr. Chairman. I thank the witnesses.

I think your testimony is very important because of your first-hand interaction with Koresh and the Davidians during the siege period.

I think one of the more tragic parts of this whole episode were the missed opportunities along the way to avoid this tragedy. We've already heard testimony, for example, that the ATF were offered a chance, by Koresh himself on the phone to come out and inspect the weapons. They chose not to. They said it was too early in the investigation.

Earlier Mr. Thibodeau, a Davidian, testified that he felt that Koresh had such a reasonable relationship with the local sheriff that perhaps if the local sheriff came out and brought the warrant we might have had a different type of situation.

We also know that, after the raid, when the siege started, the initial negotiator was getting through to Koresh and they had a kind of relationship intellectually that allowed numerous people to be released during that period, and that for some unknown reason—and I hope to find that out later with the FBI—that negotiator was taken off summarily and replaced with someone else who did not have that relationship, and no one else was ever released again. So I think there are a lot of missed opportunities.

You have a unique perspective in that you had some negotiations with Koresh and with the Davidians at this time. I wonder if you could just briefly discuss what you think were the important missed opportunities during that period?

Mr. DEGUERIN. Well, I think that you have to look at the tactics of the FBI as creating missed opportunities. In the first place, each time someone would come out—I dispute the term "release." I think the people came out when they wanted to come out. No one was being held against their will during the 51-day standoff. That's all I know about.

Each time someone came out, the treatment that they got was calculated to discourage anyone else coming out. When the children were released or came out, they were put into custody of Child Protective Services. Even when they came out with their parents, they were separated from their parents. They were—their religious and

dietary wishes were not responded to. When adults came out, every one of them went to jail and were not allowed to make bond.

For instance, the first two ladies that came out, one of them was 77 years old and practically blind. She was charged with a false affidavit, with having participated in the shooting that occurred on February 28. An agent actually testified that she held a gun and pointed it. She's—she just couldn't have done it.

When those on the inside who were seeing the news reports saw the treatment that people were getting when they went outside, well, it discouraged them from going outside.

So there was this tension going on between the tactical men who were trying to force a conclusion and treating those who were released in ways not to encourage release as opposed to the negotiators who were trying to establish trust and rapport.

Mr. BLUTE. Do you know anything about this initial negotiator on the phone that was replaced?

Mr. DEGUERIN. Yes.

Mr. BLUTE. Could you comment on that?

Mr. DEGUERIN. Well, what I know is what partially I was told by David, and that is that initially there was a man named James Cavanaugh with the ATF who David said he had a relationship with.

I don't know how you can establish a relationship over the phone, but he said that he trusted the man and that they were able to talk and they talked kind of the same language.

I've seen the tapes of that, and Cavanaugh uses some biblical terms, and he uses some, "I love you, brother," that sort of thing. You got to question that coming from an ATF agent who had just seen four of his friends killed and others wounded, but that beyond—beyond that, there was a trust that was established there, and he was taken off. I think that was because the FBI came in and—and they should have pushed the ATF out of the way.

But I think there was also some trust established with the FBI negotiators. I talked to several of them, and they were good. They're behavioral scientists, and they are engaging men to talk to. They are nice. They are not the kind of "beat on your chest" Rambo types.

Mr. BLUTE. Let me ask Mr. Zimmermann what you think were the greatest missed opportunities during this period?

Mr. ZIMMERMANN. I think you're going to talk to Clint van Zandt. He was the negotiator that I had the most contact with, and I thought he had his head on straight.

In other words, when the Branch Davidians did something that we wanted—all of us wanted them to do, like when somebody came out or something like that, instead of rewarding that, making things better so it would encourage that kind of conduct, they would do things like play tapes of rabbits being slaughtered or Nancy Sinatra singing songs, and then they would bring out lights at night and—not that Nancy Sinatra always was that bad, but the ones that she had kept—the point was, they were trying to have sleep disturbance and they were trying to take somebody that they viewed to be unstable to start with and then they were trying to drive them crazy, and then they get mad because he does something that they think is irrational.

That, I think, was the mistake made there. They should have backed the lights away, stop the noise when they gave Dick the letter—gave us the letter. They should have withdrawn all of that so it could show them, hey, this is what we want to do.

Mr. BLUTE. Thank you, Mr. Chairman.

Mr. ZELIFF. The gentleman's time has expired. We are going to go two on our side by previous agreement on the other side.

Mr. Bryant, you have 5 minutes.

Mr. BRYANT of Tennessee. Thank you.

Gentlemen, if you could, I have a number of questions. If you could keep your answers relatively short, I would appreciate it.

Did both of you go into the compound at various times?

Mr. DEGUERIN. Yes, sir.

Mr. ZIMMERMANN. Yes, sir.

Mr. BRYANT of Tennessee. Were either of you searched as you went in by the Davidians?

Mr. ZIMMERMANN. By the Davidians? No, sir. By the FBI.

Mr. DEGUERIN. No, sir.

Mr. ZIMMERMANN. The Davidians invited us as guests.

Mr. BRYANT of Tennessee. They weren't suspicious of you enough to search you for weapons or anything like that?

Mr. ZIMMERMANN. The Davidians?

Mr. BRYANT of Tennessee. Yes.

Mr. ZIMMERMANN. No, sir.

Mr. BRYANT of Tennessee. You were searched before you went in by the FBI?

Mr. DEGUERIN. And as I came out.

Mr. BRYANT of Tennessee. And as you came out. OK.

Now, in reading some correspondence, Mr. DeGuerin, I noticed that you attempted to establish a relationship with the local U.S. attorney's office in terms of negotiation. And having been involved in that type of experience myself, I know that oftentimes a defense attorney will be more likely to deal with the other attorneys, the U.S. attorney in this case or assistants, than you actually did with the law enforcement.

Any time, either one of you, did you have a relationship? Were you asked to deal with U.S. attorneys, or, even more, was a specific special U.S. attorney sent down from Washington?

Mr. DEGUERIN. No. In fact, I couldn't get phone calls returned. The FBI was far more responsive to me than the U.S. attorney's office. I tried to serve—just take a courtesy copy of the writ of habeas corpus up to the U.S. attorney's office, and they wouldn't even let me poke it through the glass window.

Mr. ZIMMERMANN. Sir, we didn't know at the time initially whether this was going to be a Federal prosecution or State prosecution, because Texas law, capital murder case, a death penalty, and at that time I don't believe a decision had been made whether or not to proceed with the State prosecution or Federal prosecution at the initial stages.

Mr. BRYANT of Tennessee. Did you ever see again a U.S. attorney from D.C., a DOJ attorney, down at Waco during this time?

Mr. DEGUERIN. No.

Mr. ZIMMERMANN. I did not.

Mr. BRYANT of Tennessee. Let me move on to another question if I could.

Mr. Zimmermann, you testified earlier today that you felt that the details of a voluntary surrender had been worked out, and in fact you detailed specifically how that would occur.

Let me ask you to detail for the record as best you can who you made that deal with and when that deal was made. Give me names of people up the line that you negotiated this deal with, because I want to ask these people what they saw.

Mr. ZIMMERMANN. I don't know if I would call it a deal. The parameters were given to us by the FBI. And, Dick, you can correct me. I think it was Jeff Jamar. It might have been——

Mr. DEGUERIN. I think Jeff Jamar.

Mr. ZIMMERMANN. Usually Jeff Jamar and Bob Ricks were together every time. They were all always there. I think it was Jeff Jamar. They made a lot of sense. There wasn't a whole lot of fine-tuning needed. Like I said, the only thing that I can remember asking them to change was to let the little children come out with their mothers, and they didn't have a problem with that.

Mr. BRYANT of Tennessee. So the FBI gave you the details you've talked about. You and—Mr. DeGuerin would come out first with Mr. Koresh, they would put on plastic handcuffs and go through metal detectors, and, Mr. Zimmermann, you would come out last. This is a detailed plan the FBI had given you?

Mr. ZIMMERMANN. It's all oral. It was all oral. In fact, between the date of April 1 when we went in together for the first time and April 4, I put—I started to write that out so that we could get it typed up and get it in writing, which never did occur, because, I don't know, I think it sort of got put to the side. We were concerned with getting them out, because they had already agreed to those terms. Both sides had agreed to those terms, the FBI and the Branch Davidians.

Mr. BRYANT of Tennessee. I will ask those people some more about that when they testify.

Mr. Zimmermann, you asked a question that piqued my interest and you didn't get a chance to answer it—you didn't get a chance to answer the question. You were alluding to the fact the FBI, you felt they did not anticipate that fire would occur because they had made no preparations to fight fire.

Mr. ZIMMERMANN. Right. I was trying to answer Ms. Slaughter's question, and I was saying that the way I interpreted that transaction was—is that the references to fire that Steve and the others they were talking to on the telephone was quoting biblical scriptures and clearly not some threat to have a fire.

And I think one indication of that is—or one evidentiary thing you can look at is that the FBI certainly didn't take it seriously. If they did, would they have—well, in my judgment, they didn't, because if they thought that there was going to be a fire on April 19 as a result of them smashing the building with tanks and inserting what they call tear gas—which I call CS gas, not tear gas—they wouldn't have done it. Jeez, we hope they wouldn't have done it. The innocent kids in there would be burned up.

Mr. BRYANT of Tennessee. Let me ask you another line of questions real quickly, and I'll have to hold this back where I can read

it. Peter Smerick, are you familiar with him at the FBI, one of the psychological people? Did you, either one of you, have any dealings with Mr. Smerick?

Mr. DEGUERIN. No.

Mr. ZIMMERMANN. No.

Mr. BRYANT of Tennessee. I understand he gave three or four opinions, basically counsel, like you are doing, to hold back and wait and that the fifth opinion he gave was, let's go in and have the confrontation.

Mr. ZIMMERMANN. All I know is that I have read what he had allegedly counseled and that he was pressured to change that and then he left the area. I never met him.

Mr. BRYANT of Tennessee. OK.

Mr. DEGUERIN. I never met him.

Mr. BRYANT of Tennessee. Just real quickly—well, I'll tell you what. I'll be generous and yield back the balance of all of my time there.

Mr. ZELIFF. Mr. Chabot will take the balance of your time.

Mr. CHABOT. Thank you.

Very quickly, Mr. Zimmermann, in response to my earlier question about the lessons of Waco that we should learn, you mentioned leadership and accountability.

Would you please expound upon what you meant by that?

Mr. ZIMMERMANN. I was trained and raised on the theory that as a military commander I am responsible for everything that happens in my unit, and when I get assigned a mission, if I accomplish the mission, the credit goes to the troops, but if I fail in the mission, it's my responsibility, because I'm supposed to make sure everybody is trained and that we accomplish the mission.

I think that unless the oversight process that you're going through here results in some leadership changes, we're going to have people still in the position that they were in before this Waco fiasco making the same kind of bad judgment calls.

In other words, once we have a commander who has demonstrated that he cannot react under stress and respond appropriately, we relieve him of command and we put somebody else in that we can. We owe it to our troops.

And I have the same feeling for those young ATF agents, and if you read my written opening statement, I don't know that I would concur with calling them heroes in the sense that they were just carrying out orders. They probably don't think they are heroes. But I'll take Rodriguez in a minute as a trooper. He'll do what he's supposed to do. And he is entitled to, and people like him are entitled to leaders that plan better, and when those plans go awry like they did, they need to be relieved of their command and not just put somewhere else and kept on the payroll.

The Justice Department didn't even do as much as the Treasury Department did. There has been no accountability. I tried to use an example from the military. Let me tell you one of the ironies of this case.

On April 19, 1993, the day of this fire, the U.S. Court of Military Appeals, a civilian court that is the highest court in the military justice system, affirmed the conviction of a Marine officer for dereliction of duty because he left a training exercise and left one of his

men in the desert and that man expired. He died and that man was charged with dereliction of duty for the loss of one life through a pure mistake, but he was responsible.

And on that same day, 80 people died in Waco, TX, because improper decisions, bad judgment was made, no conspiracy, no intentional killing, but incompetence, and there has not been even a disciplinary—administrative disciplinary action taken by anybody in the Justice Department, and that's wrong.

Mr. ZELIFF. The gentleman's time is expired.

Mrs. Thurman for 5 minutes.

Mrs. THURMAN. Mr. Zimmermann, let me ask you a question. Have you ever been involved with Federal employees negotiations at all, ever?

Mr. ZIMMERMANN. Federal employees negotiations?

Mrs. THURMAN. Because you're talking an awful lot about what happened with ATF or what you would have done in firing those or getting rid of those people. Have you been involved in any of the personnel Federal employee acts at all?

Mr. ZIMMERMANN. You mean as a civilian?

Mrs. THURMAN. Yes.

Mr. ZIMMERMANN. No, ma'am. It's harder than what I said, I know.

Mrs. THURMAN. And it is, but let me just suggest that you, Mr. Magaw, did in fact, and let me state one of the reasons that he was very concerned, basically very similar to what you're saying: He felt they were not right either, but when they did put them back into office, that they put them back into nonsupervisory, couldn't wear their guns, couldn't do anything, because they were concerned that if in fact they were put back on through trial, that they would be able to be reinstated back at the level where they were previously.

And I am not an attorney, nor am I a Federal employee negotiator, so I'm just giving you the example of what they said. I don't disagree with you, but I will say Mr. Hartnett is gone, has resigned, and Sarabyn and Chojnacki were the two that filed suit, so—we don't know what happened there, OK. I think we need to be very careful. They haven't tried to take disciplinary action.

Mr. ZIMMERMANN. One of your fellow committee members, though, asked is there any legislation action that you can take. Gee, if that's the law, ladies and gentlemen, change the law.

Mrs. THURMAN. No question. Mr. DeGuerin, you actually were Mr. Koresh's attorney.

Mr. DEGUERIN. Yes, ma'am.

Mrs. THURMAN. How many total hours did you spend with him, do you think, in the period of time that you represented him?

Mr. DEGUERIN. About 32 hours.

Mrs. THURMAN. About 32 hours. Based on those hours, you have come to some conclusions that he would have come out after he completed the seven seals; is that correct?

Mr. DEGUERIN. No, ma'am. It was based on a lot more than that 32 hours. That's just the actual——

Mrs. THURMAN. Could you tell me briefly what it was based on then?

Mr. DEGUERIN. Sure. It was based on the month, approximately a month or so, that I spent as his attorney and trying to learn all

the issues and the facts, consulting with the religious experts, talking to the FBI, going to the scene, seeing all the things I did, not just the 32 hours that I spent in some kind of direct contact.

Mrs. THURMAN. Did you also speak to any other members of the Davidians who had since left?

Mr. DEGUERIN. Yes, I did.

Mrs. THURMAN. Could you tell me who they were?

Mr. DEGUERIN. Rita Riddle, I spoke to her during the standoff; not directly to Kathryn Schroeder but to her lawyer; to Brad Branch, who had come out early; to Livingston Fagan, who was probably the most knowledgeable about the religious——

Mrs. THURMAN. How about Marc Breault or Ms. Bunds or any of those that had been interviewed at all who had suggested——

Mr. DEGUERIN. No.

Mrs. THURMAN. Just one of the things that has concerned me in listening to this is that we have heard different testimony over the last several days that the consensus among the psychiatrists on the scene, experts from the FBI whom you talked with as well, that Koresh potentially was suicidal.

Joyce Sparks, who spent more time—I think about 2½ months—talking to him back and forth on his religious beliefs, testified that it would have been contradictory to his teachings to surrender.

You know, Ms. Jewell, who lived most of her life there, testified and said that details would change, which you said earlier in your testimony that he kept coming back with other excuses or reasons why. But she said in her testimony that the details would change as David received more messages from God but there was never a time when he didn't expect to be killed by the Feds—you need to know that. The same thing that Ms. Bunds had said, she was not happy with—obviously, with Mr. Koresh. But she basically said in the articles that we had, "The Sinful Messiah", that he would use the law when it backs up something he wanted to say, but when it didn't, he would just explain it away.

She went on to say, Ms. Jewell: We didn't expect to be killed by the Feds, who David said were Babylon—or that we would be expected.

Based on this information, OK, and based on all of this testimony that we've had, a reasonable conclusion for the negotiators was that Koresh would never come out. Based on what you've said today, what I have heard in the past, I'm having a hard time reconciling your suggestions and what I have heard over on the other side.

I mean, could we agree maybe that there is a possibility here that what you believe is one thing, but other beliefs are out there, too? I mean, that maybe Mr. Koresh did have and had other ways of believing than what we are seeing here today.

Mr. DEGUERIN. Sure.

Mrs. THURMAN. I mean, I think that is important.

One of the other things I need to bring up here is that you all had mentioned Paul Gray, and I guess we had this thing up here. It is my understanding, just so you will know and maybe you all can clarify this, but this is what we have been told, that he actually never worked for ATF, that he actually worked for the city of Houston as an arson investigator, and even during the time that

he was the arson investigator, he worked for the Houston Fire Department. He may have—his phone number may have been on there but never was he paid by ATF—does that say special agent on there?

Mr. ZIMMERMANN. Yes, it does. And, ma'am, you are right, though. He was paid—my understanding was, he still was on the Houston Fire Department payroll. He was assigned to an ATF task force.

Mrs. THURMAN. To a task force?

Mr. ZIMMERMANN. Yes, but his office was in the ATF. He carried this card.

Mrs. THURMAN. He was there for the purpose of the Houston Fire Department to carry out the arson investigation because he had had 25 years in this area; is that correct?

Mr. ZIMMERMANN. I don't know about that. I know for 8 years he gave out this card saying he was an ATF agent. If we are trying to get somebody impartial, we could have gone to Miami or Philadelphia or Los Angeles, but not that.

Mr. DEGUERIN. Since that was my point, could I respond to that briefly?

Mrs. THURMAN. Sure.

Mr. DEGUERIN. I know a lot of people in the Houston Fire Department Arson Division. I have got some friends there, and I learned more about it as time went on just through my friends.

There are at least 10 other very qualified arson experts at the Houston Fire Department that could have—that did not have that connection to the ATF, and why Houston even then? There are arson investigators all around the country that don't have the ties. What I am saying is that doesn't pass the smell test. I don't know about Mr. Gray's motives, but what I do is about the appearance.

Mrs. THURMAN. And we will be hearing from them so that we can clarify this. Thank you.

Mr. ZELIFF. Thank you. The Chair now wishes to recognize Mr. Barr for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

I would like to direct the attention of both Mr. Zimmermann and Mr. DeGuerin to three documents. I am not sure whether you all have these. So if not, Mr. Bush, if you could distribute these.

These relate, gentlemen, to a discussion that has come up virtually every day because it concerns, at best, a spin control that began in the immediate aftermath of the February 28 raid and continues even today as reflected in some of the complaints by some of my colleagues here concerning statements by the White House and our efforts to get the facts out in these hearings.

The first one—and I am going to go down here and draw your attention to the charts which have some blowups of these documents and the relevant language prepared by one of your colleagues, Mr. Evans, when he was here just the other day, lest there be any impression on your part that these are props or whatnot. He had these blown up because they were right interesting language to him.

And what I would like to know is, in your opinion—and I would like to look at all three of these very quickly and then ask you, in your opinion—and both of you have, I think, fairly common knowl-

edge, very extensive experience in handling criminal matters in Federal court.

This first document is contained—the first one that you have there, which is dated March 1, 1993, and it indicates that immediately upon initiating the shooting review by ATF, the stories did not add up by the agents and there were instructions from Mr. Johnston, the assistant U.S. attorney in control, at least initially, of the investigation from the prosecution's standpoint, directed that the interviews stop because they didn't want to create, heaven forbid, Brady material that might be exculpatory, certainly didn't want to do that.

When notified that there was an interview that had to go forward, it indicated that Johnston authorized it, but no notes were to be created, note trail.

The second document, which is also blown up here, concerns the second one. The relevant language here indicates very clearly that the Treasury Department was reflecting DOJ's, the Department of Justice's request that no interviews or discussions with any of the participants who may be potential witnesses be conducted.

Here again, the fear is, heaven forbid, that we might generate some information that would fall into check spelling Jencks, Brady or Giglio or, as you all are aware of more than I am, concerns information that might be mitigating or exculpatory and would at some point in a prosecution have to be turned over to the defense according to constitutional edicts of due process and protection.

The third document here—this continues on the second one there.

The third one is some handwritten notes, and we have not yet been able to determine to whom these belong, indicates that Mr. Ray Jahn, who I think you are both familiar with, who is the assistant U.S. attorney who eventually took over prosecution of the actual case, does not want these individuals reinterviewed because they do not want to produce any more exculpatory statements.

It is my impression as a former U.S. attorney, some members of this panel, very learned members of this panel have indicated it is not their impression, also being very familiar with Federal criminal procedure, that this is not standard Department of Defense operating procedure.

Other members on the other side indicate that this is just—that this is standard operating procedure, that immediately upon initiating a shooting review designed, as we have elicited from Mr. Johnston himself, designed to search for the truth and uncover evidence to determine whether or not something went wrong, they feel that it is standard operating procedure for the Department of Justice to come in and shut that investigation down.

In your experiences, Mr. Zimmermann and Mr. DeGuerin, does this comport either with the search for the truth or with standard Department of Justice procedures?

Mr. DEGUERIN. No, sir.

Mr. ZIMMERMANN. No, sir.

Mr. BARR. Would you care to expound on that?

Let me also tell you, by way of background on that particular question, your colleague, Mr. Tim Evans, who was here the other day, he went over these at some length because he had been sitting

in the audience on Wednesday and Thursday when we initially discussed these documents and, on his own, had these drawn up because he was so flabbergasted to hear testimony that—or efforts to put into the record that these reflect standard Department of Justice procedures to close down a search for the truth, that he stated, and we went into some detail on Friday, that this was certainly not his impression.

Yet then, again, we came back yesterday, and Mr. Noble, Ron Noble, who is a very forceful individual, some would say intimidating individual, said this is absolutely standard procedure, and he could state that from his background, being with not only the Department of Justice but Department of Treasury and so on and so forth.

But there certainly are times, are there not, when it is important for a prosecutor to step in and make sure, for example, that public statements are not made that might impinge or infringe or prejudice an investigation or prosecution; is that correct?

Mr. DEGUERIN. I see a distinction between a prosecutor asking the investigators not to make public statements and telling an investigator not to do something that might develop evidence that could be favorable to the defense. The first thing is not wrong, that is, telling an investigator not to talk to the press. The second thing is clearly wrong, if an investigation is impeded by a prosecutor telling an investigator, don't go interview somebody or don't take notes if you do.

Mr. BARR. The reason I ask this, because the light just went on, so you can reflect this in your continuing answer. Would this reflect, in your mind, these documents, an effort to impede an investigation or possible obstruction of justice?

Mr. DEGUERIN. Well, it could be, and I am qualifying my answer because it is shocking to see this in the first place. As a defense lawyer, sometimes we suspect that there is stuff like that going on. But there is an absolute duty that a prosecutor has to turn over to the defense any evidence that is arguably favorable to the defendant. It is just a matter of fair play, because the investigators that investigate a case usually are on the prosecution side and they develop most of the evidence.

But when you tell—when a prosecutor tells an investigator, don't develop evidence or don't take notes if you do because it might be helpful to the defense, that ain't right.

Mr. ZELIFF. Gentleman's time is expired.

Mr. BARR. I would ask Mr. Zimmermann to respond, also.

Mr. ZIMMERMANN. I will be quick, Mr. Chairman. Two quick observations.

First, I have never seen anything like this in writing. I am shocked that they put it in writing and left a trail.

Second, I note that this always seems to be on the receiving end of somebody else's instructions. In other words, this seems to be—each of these three documents seems to be recording what the Department of Justice wants the Treasury or the ATF to do as opposed to initiating itself.

So if I were the defense lawyer in this situation, I would ask for a hearing, and I would get people in under oath and find out who

was it that said this. Who gave you these directions? What did they tell you to do?

Because these all look like they are recording what instructions somebody gave from Johnston, from Jahn and from the Department of Justice. These aren't Department of Justice documents. These are somebody else's documents is the point I am getting at.

So we would want to make sure that that is what was really said, and it sure looks like what they said. I don't know why somebody would not record this accurately, but it doesn't pass the smell test either.

Mr. BARR. Thank the gentleman.

Mr. ZELIFF. Thank you.

Ms. Lofgren from California, you are recognized for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman. I appreciate being here now. The Science Committee also had the markup of the NASA authorization this morning so, as with some Members, I have been running back and forth.

At this time, I would like to yield 4 of my 5 minutes to Mr. Schumer and the remaining minute to Ms. Jackson Lee.

Mr. ZELIFF. Mr. Schumer.

Mr. SCHUMER. Thank you. I want to thank the gentlelady from California.

I just found it a little ironic, Mr. Zimmermann, you complained that they had gotten someone who was partial because he was part of the ATF, and here we have two very fine admittedly defense lawyers whose job is not to be partial taking our whole 6 hours here, and I find that a little bit ironic.

I would first like to ask you, Mr. Zimmermann, you mentioned that Mr. Schneider was a peaceful man, and the whole impression that both you and Mr. DeGuerin are giving is that David Koresh was a rational, reasonable person. Mr. DeGuerin said, well, let's assume he had kooky religious views. But I think, from everything we have heard, Mr. Koresh was not simply somebody with different religious views. Would you admit that Mr. Koresh was a criminal? Mr. Zimmermann? You can answer that yes or no.

Mr. ZIMMERMANN. I don't think it has been proved, but I think there is evidence of that.

Mr. SCHUMER. How about you? That is a good defense lawyer, Mr. Zimmermann. How about you, Mr. DeGuerin?

Mr. DEGUERIN. I would agree with that. I think that if true, what has been said about him, he was guilty of a lot of crimes.

Mr. SCHUMER. And do you consider somebody who is part of a group that stockpiles 48 illegal weapons, hundreds of handgrenades, peaceful?

Mr. ZIMMERMANN. I don't—no, I certainly don't. I don't think Steve Schneider was involved in that.

Mr. SCHUMER. I see. But you wouldn't consider Mr. Koresh peaceful?

Mr. ZIMMERMANN. That's the first time I have heard there have been stockpiles of hundreds of grenades.

Mr. SCHUMER. Let's just say he had 48 illegal weapons and some illegal handgrenades. Would you consider that peaceful?

Mr. ZIMMERMANN. I think it is a violation of the law. He is a criminal.

Mr. SCHUMER. But you didn't answer my question. You made the comment, you brought the word up peaceful, that Mr. Schneider, who is one of his chief people—I don't want to use "lieutenant" because you didn't like that word. What word would you like me to use?

Mr. ZIMMERMANN. He described Mr. Koresh as a teacher of teachers.

Mr. SCHUMER. OK, one of his students, his pupils, one of his main pupils, as peaceful. I am asking you about Mr. Koresh. On the—and we won't even call it a compound. On Mount Carmel, where they had 48 illegal machineguns and at least a quantity of illegal handgrenades, would you consider Mr. Koresh peaceful? Yes or no.

Mr. ZIMMERMANN. The way you say that, probably no.

Mr. SCHUMER. What do you mean, the way I say it?

Mr. ZIMMERMANN. Because I would like——

Mr. SCHUMER. It is my time.

Do you dispute those facts? Do you say it has not been proven that there were 48 illegal machineguns and a bunch of illegal handgrenades on his compound?

Mr. ZIMMERMANN. I believe there were 48 illegal automatic weapons on April 19. I don't know whether that's the case on February 28, sir.

Mr. SCHUMER. Right. But we are talking about April 19.

Mr. ZIMMERMANN. Right. April 19, no question. That's the fact.

Mr. SCHUMER. Didn't you know about the trial? Didn't many or at least several Branch Davidians testify that there were these weapons there and that on the morning of February 28, there was preparation to give those weapons out and to shoot? Let's strike and to shoot. There were those weapons there, and there was all sorts of preparation.

The names of the people who testified, as I believe, one was Schroeder. I don't have my notes here in front of me. Isn't that correct?

Mr. ZIMMERMANN. Sir, I believe there was testimony that weapons were there and that they were distributed. I don't recall any testimony about anything about illegal weapons, though.

Mr. SCHUMER. I see. But there were weapons there. How about handgrenades? Was there testimony about that or were they just——

Mr. ZIMMERMANN. I don't know. I don't recall that.

Mr. SCHUMER. Do you recall, Mr. DeGuerin?

Mr. DEGUERIN. No, I don't know——

Mr. SCHUMER. Even though you know every other detail about the trial.

Mr. DEGUERIN. That's not fair, Mr. Schumer.

Mr. SCHUMER. Well, let me ask you. You don't recall that. So, in other words, you have no deep doubt that there were 48 illegal weapons?

Mr. DEGUERIN. I never said I knew all the details of the trial.

Mr. SCHUMER. I am asking you that right now, sir.

Mr. DEGUERIN. What is your question?

Mr. SCHUMER. My question is, do you doubt—do you have doubts that Mr. Koresh had on his compound illegal weapons and illegal handgrenades? Do you have any doubts about that?

Mr. DEGUERIN. No. He told me he had illegal weapons. He did not tell me that he had handgrenades there, and I saw no handgrenades. I did see some grenades that the ATF had thrown in, and I brought one out——

Mr. SCHUMER. What do you mean thrown in?

Mr. DEGUERIN. The ATF threw in grenades in their dynamic.

Mr. SCHUMER. They didn't throw any grenades in, as I understand it. They were flash packs.

Mr. DEGUERIN. Have you ever seen what a flashbang can do to somebody? It can tear your arm off.

Mr. SCHUMER. Sir, they were not grenades. You believe they were grenades?

Mr. DEGUERIN. They were grenades. I brought one out to the FBI and turned it over to them.

Mr. SCHUMER. Right, OK, Mr. DeGuerin. I think that would hamper your credibility, because you are the first person who would say those were grenades. Let me ask you——

Mr. DEGUERIN. Can I answer that?

Mr. SCHUMER. I would like to ask the question simply because I have 5 minutes. Today, I am the lawyer, and you are the witness, sir. Today, I am the lawyer, and you are the witness, sir.

Let me ask you this. Do you have any doubts that David Koresh had illegal sexual relationships with some of the people at the compound?

Mr. DEGUERIN. I don't know.

Mr. SCHUMER. You don't know. You have no knowledge of that?

Mr. DEGUERIN. I didn't say I had no knowledge. I haven't—I don't know, and I am not here to defend——

Mr. SCHUMER. Do you doubt the testimony of Kiri Jewell who was here? Did you hear about that?

Mr. DEGUERIN. Yes, I did.

Mr. SCHUMER. You doubt that?

Mr. DEGUERIN. Yes.

Mr. SCHUMER. Do you doubt that, Mr. Zimmermann?

Mr. ZIMMERMANN. Yes, sir. Do you know why?

Mr. SCHUMER. Yes, you can tell me why.

Mr. ZIMMERMANN. We didn't learn of that the first time that she testified for this hearing. She has made—that kind of claim has been made for some time. Her own mother didn't believe that. Her own grandmother didn't believe that.

Mr. SCHUMER. Right.

Mr. ZIMMERMANN. There have been doubts about prior—contradictory statements that she has made in the past. Now, it may be 100 percent true. It may be 100 percent true.

Mr. SCHUMER. My time is up. In my judgment, in many ways, these witnesses are trying to simply deny things that just about everybody else accepts as fact about David Koresh.

Mr. DEGUERIN. And I would like to respond to that. May I respond to that?

Mr. ZELIFF. You can respond relative to the personal comment briefly.

Mr. DEGUERIN. Regarding your comment about my credibility, Mr. Schumer, when I went into the compound, I was searched, and when I came back out, I brought to the FBI agents and showed them a spent grenade. That's what is sometimes euphemistically called a flashbang. It is a grenade. It has an explosive charge in it. It is very dangerous. It can blow your hand off. It can blow your face off. It can kill.

I would have brought out some of the unexpended grenades that the ATF threw in, but I was worried about bringing out a live grenade, so I left them there. There were a number of grenades.

Mr. SCHUMER. Let me ask you a question, sir.

Mr. ZELIFF. No. You are out of order.

Mr. SCHUMER. OK.

Mr. DEGUERIN. And so as to my credibility about that, Mr. Schumer, ask Jeff Jamar or Byron Sage about the grenade.

Mr. SCHUMER. I will ask them, and they will say that they were flash packs and not grenades.

Mr. ZELIFF. The Chair recognizes Mr. Shadegg for 5 minutes.

Ms. LOFGREN. Mr. Chairman, I yielded 1 minute of my 5 to——

Mr. ZELIFF. You had the full 5 minutes. There was one 4 minutes and 1 minute—Mr. Schumer took all of it, plus a little bit extra. Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman. I appreciate this opportunity to question the witnesses.

Let me say, as an introductory comment, that much has been made here of the issue of whether or not these hearings are intended to criticize law enforcement or to attack law enforcement. Indeed, the White House says we are trashing law enforcement, undermining the morale of law enforcement officers, and is very, very critical of these hearings.

Let me tell you, I spent 8 years in law enforcement. As I have said before, my father was a deputy sheriff. I do not know a law enforcement officer who believes that when there is a legitimate inquiry into mistakes or into wrongdoing, that that is trashing law enforcement.

Having said that, let me say that while one of my colleagues on the opposite side might say that you are our witnesses, I beg to differ quite strongly with you on a couple of points.

I think the most telling point on the issue of who shot first—and I think that is an unfortunate issue that has come up in these hearings—was Mr. Zimmermann's remark that that question is irrelevant. As I heard Mr. DeGuerin remark, he said there were holes going down and holes coming in the door. Unless you have a time clock and a photograph of every minute, which direction the holes come from cannot possibly tell you, in my mind, who shot first.

Mr. ZIMMERMANN. Right.

Mr. SHADEGG. Beyond that, the notion that there are, in fact, holes coming down, shots from the helicopters, I will tell you, if I had been in the helicopter—and I don't know what went on, but if I had been in a helicopter and a firefight had started out on my ground and I was an ATF agent, I would have started firing, because my guys are under fire, by gosh, they are coming under fire.

Having said that, the third point I want to make, Mr. Zimmermann, you said there was no ambush because if they had wanted to kill them in the trailers, they could have. Well, I was shocked to see the trailers are just canvas covered, not metal. It occurred to me that if Koresh had wanted to just blow them away and had known they were the agents, he could have ambushed them.

But you went on to say that it was your theory that it was an accidental discharge by an agent coming out of the trailer. I will tell you, the agents I have known in my life are trained not to have accidental discharges, and it is just as plausible a theory in my mind that it was an accidental discharge by a nervous Davidian who was not as well trained to use that firearm.

Mr. ZIMMERMANN. The reason I say that, sir, is that that was information that was given to us by someone in the press who had a confidential source within the ATF who indicated that someone said that as he was coming out of the back of that, he tripped, his weapon wasn't on safe, and it discharged.

And if you look—supposedly, if you look at trajectory, the round went into the front of the pickup truck's engine compartment, and it was coming horizontal, and there were no Davidians horizontal, and the only other people in front was the other agents. I have no verification of that.

Mr. SHADEGG. With that useful information, that helps.

Also, with regard to the shots down, Mr. DeGuerin, you indicated that the roof was the highest point in the area. There has been discussion of a tower. Was there not also a tower?

Mr. DEGUERIN. Same thing. It was called the tower or the observation tower. It is a fourth floor—it is not shown in this picture, but in the diagrams that I have brought, it is shown. It was the fourth floor—actually, it was a bedroom of David Koresh, and it had almost a flat roof.

Mr. SHADEGG. I want to go into one other document.

Mr. Barr went over two documents with you which were—have been brought into these hearings, the essence of which is instructions from the Justice Department to ATF agents to stop their shooting review because it was creating Brady review material.

The Department of Justice, upon hearing that evidence come into this hearing, issued a press release—and I have this press release here, and we are putting it up there, and you have copies of it. That press release, issued within minutes of the testimony coming into this hearing, says that during the past 2 days, the congressional hearings on the tragedy at Waco, a longstanding Justice Department practice has been badly mischaracterized.

Is it, in fact, a longstanding Justice Department practice, to your knowledge, or have you ever heard of it, that any time Brady material is being created, you instruct people to stop asking questions?

Mr. DEGUERIN. No, sir, not at all.

Mr. SHADEGG. Would that be an outrage?

Mr. DEGUERIN. It is outrageous that there was an instruction to stop because you might create Brady material.

Now, this is a little bit different. This tries to say that it is such standard procedure that it is prosecution 101. Well, I have never been in the Justice Department. I have only been a State prosecutor, and I don't know of any such requirement.

I can understand that there might be an effort to stop a congressional investigation that's going on at the same time as a criminal investigation, but two different criminal agencies investigating at the same time, let them at it. Let them have it. Do it. Develop the facts in any way you can.

Mr. SHADEGG. One more quick point. In the second paragraph it says something about the often request of the Federal Government to temporarily refrain from pursuing an investigation. There is nothing in these documents that suggests the request was done just to temporarily refrain, but rather to refrain because they were developing conflicting information; isn't that right?

Mr. DEGUERIN. That's the way I read those memos.

Mr. SHADEGG. I am running out of time.

I would like you—at the last moment, I would like to ask each of you to summarize, if you would, your views of why you believe—and, Mr. Zimmermann, you touched on this already—why you believe it was somebody in Washington or somebody other than the people you were dealing with day to day that made what appears to be the illogical decision to pull out the agent who was successfully—or appeared to be successfully negotiating, and the decision to go in at the time they went in. Those two seem to me to be inconsistent with an effort by the FBI to try to resolve this peacefully. I would desperately like to believe that that was their goal.

You had to have met a number of FBI agents. You had to have known what they were like. You knew the agents in the field to some degree. Why did they pull out, in your view, the agent who was having success in negotiating and why did they make that final decision to go in?

Gentlemen, each of you.

Mr. ZIMMERMANN. I don't know why they pulled—are you talking about Special Agent Cavanaugh?

Mr. SHADEGG. Yes, I am.

Mr. ZIMMERMANN. I don't know if that happened before we got there. I don't know the answer, and I don't want to guess.

With the other one, again, I guess I also have come to have some faith in my own ability to look at a man face to face, have him tell me something, have that happen over a period of time and know whether I can believe him or not. And, like I told Congressman Schumer—I wish he were here to hear this—but I told him that I had a lot of respect for Jeff Jamar, Bob Ricks, Byron Sage, Clint van Zandt. Those were the people we dealt with.

I thought they shot straight with us. They gave us—they respected the attorney-client privilege. They didn't pump us for information. They tried to facilitate this joint goal. They told us that we had all the time in the world.

If Mr. Schumer is right, that Jamar can come in here and change his position and say, I made that decision, and if all I have read is true, is that that decision had already been put into effect before April 14 when he told us we had all the time in the world, because as I understand it, the Attorney General approved it on the 17th and it had already worked its way up, that meant he would have had to have left Waco. Jamar was involved before the 14th. He just flat lied to us. I refuse to believe that Jeff Jamar just flat lied to us. I may be wrong.

Mr. SHADEGG. Mr. DeGuerin.

Mr. DEGUERIN. Well, on the two subjects, as far as the negotiator pulling Cavanaugh out, my read on that—no one's told me, no one consulted me, but my read on that is because he was ATF and ATF had been so emotionally involved in losing agents, and rightly so, that his neutrality or his ability to negotiate may have been compromised by that.

Plus the fact that the FBI moved in and took over, and they should have. The ATF shouldn't have been involved from the time of the tragedy until everything was secure. They should have been moved out, and rightly so. That is on the negotiator.

As far as where the decision was made for the tear gas or—I don't know.

Mr. ZELIFF. We are going to have to break here. We have 4 minutes for a vote. We are going to come back 5 minutes after the vote, OK?

[Recess.]

Mr. ZELIFF. The joint oversight subcommittees' hearings on Waco will now come to order.

The Chair yields to Mr. Condit from California for 5 minutes.

Mr. CONDIT. Thank you, Mr. Chairman.

First of all, let me apologize to you and the witnesses. Once again, I have a conflict in schedule, and I have not been here, and I have to leave at this moment to go back to another hearing where we are having a hearing with the Agricultural Committee, which is an extremely important one for me and my district.

I do want to yield my time to my colleague from Mississippi. In doing that, I want to state that that should not bias me against any of the testimony of the witnesses. I understand they did a good job this morning, but I do want to give him my time, give him the opportunity to ask whatever questions he feels are necessary to ask.

Mr. ZIMMERMANN. Would you like me to answer that last one? I didn't. I started. I thought you asked a good question, and I ran out of time. I promised I would get back to you. Should I do it now or do you want me to wait?

Mr. TAYLOR. Let me ask you something else. You can talk as long as you want. I can't.

Mr. Zimmermann, interestingly enough, you and your colleague are the first two to say that the deaths of the ATF agents were justifiable.

Now, I am going to turn the tables on you for a second. I am going to guess that when you were arguing on behalf of the Davidians that you said, since you can't prove that my client individually pulled the trigger in the deaths of those agents, therefore, it is not murder. So I am going to turn the tables on you and ask you to tell me which one—was it Conway LeBleu, Todd McKeehan, Robert Williams, or Steven Willis that deserved to die that day?

Mr. ZIMMERMANN. I didn't say, at least I don't think I said, that those deaths were justified.

Mr. TAYLOR. You did, sir.

Mr. ZIMMERMANN. No, sir. I answered your question.

Your question was, have you read or heard or seen anything that would cause you to believe that the murder of those four agents

was justified? All I did was answer your question as honestly as I could, and I said, yes, sir, I have. One is the jury verdict. They were charged with murder of those four agents. The jury acquitted them of that. That is the answer that I gave you, and I think that's a truthful answer, sir.

Mr. TAYLOR. Sir, having turned it around, I am sure that the defense said that since you cannot prove which one of these Davidians fired, then you can't convict them individually. I am saying, which of these guys deserved to die? You are using that same line of testimony that kept the Davidians probably from getting the electric chair.

Mr. ZIMMERMANN. No. 1, nobody said that murder occurred, but you just can't show which of these did it. The whole defensive——

Mr. TAYLOR. There are four dead guys on the ground, Mr. Zimmermann.

Mr. ZIMMERMANN. We are talking about the difference between murder, though, and self-defense, Congressman Taylor. And all I'm saying is, the defense was that any of the Davidians that fired were firing in self-defense, not just that somebody committed murder, but it wasn't these 11. If that had been the defense, frankly I think the jury would have convicted them all, all right? But they didn't.

Now, none of those people deserved to die.

Mr. TAYLOR. Weren't some of the Davidians convicted of manslaughter?

Mr. ZIMMERMANN. Yes, they were.

Mr. TAYLOR. They were?

Mr. ZIMMERMANN. Yes, sir. Voluntary manslaughter, which is a lesser included offense of murder. It takes out the deliberate intent to kill. It is a reaction—I don't want to get into a lengthy thing. Basically, if you are provoked and you kill somebody, that is voluntary manslaughter.

Mr. TAYLOR. Also, for a clarification, you were asked by Mr. Schumer—Mr. Schumer had asked you if there was a reason to take young Ms. Jewell away from David Koresh. You said you didn't know of anything.

You are an agent of the law. Let me tell you that the Michigan court ruled that there was plenty of reason to keep Ms. Jewell away from David Koresh and prohibited her mother from taking her anywhere near David Koresh based on the testimony they received.

Mr. ZIMMERMANN. I am aware of that.

Mr. TAYLOR. Yes, sir. Now, in fairness, I would like you to answer the question that you have requested.

Mr. ZIMMERMANN. At one earlier point, you had made a statement that—or asked a question or pointed out that in answer to another Congressman's question, I stated that no administrative or criminal disciplinary action had been taken against anybody, and that based on Special Agent Merletti's testimony yesterday, that in his report, he reported, in answer to a question by somebody else, that in his opinion, that a felony offense had been committed by the two special agents who had lied to a Federal investigator that they had violated Federal law.

And all I said was that that has—there has been no administrative action based on that felony nor no criminal proceeding and you said, well, aren't they assumed innocent? And I want to agree with you.

Mr. TAYLOR. Those two agents who failed to get the message from Rodriguez and proceeded with the raid?

Mr. ZIMMERMANN. I don't know what Mr. Merletti was talking about precisely, but all I was pointing out is that their own investigation indicated a felony offense had been committed, and then you correctly pointed out they have been convicted of nothing. And I wholeheartedly agree with that. They're entitled to the presumption of innocence, to a trial and so forth.

Just like the point I want to make about the way things are supposed to happen in this country is when someone is suspected of a crime, even if it is child abuse, even if it is capital murder, we give them a trial. The jury finds them guilty beyond a reasonable doubt before they go to sentencing. Then a jury or a judge sentences them and an appeals court makes sure the trial was conducted with due process. And then and only then do we kill them. We don't kill them first like happened in Waco on April the 19th.

Mr. TAYLOR. It is a shame the Davidians didn't get that message, sir. I promised Ms. Lee that I would yield her 1 minute of Mr. Condit's time. I do so now.

Ms. JACKSON LEE. You are very kind, Mr. Taylor. Thank you very much.

Very quickly, let me—as I was finishing my question, Mr. DeGuerin, we were asking what would make individuals follow an individual like Mr. Koresh. I was saying that to acknowledge that you had the followers and people who deeply believed and then you had, certainly, Mr. Koresh, and I know you are a defense attorney. I am not asking you to negatively assess what would have been your client and may still be his family members. But my question would be, in the time that you had with him, did he tell you how he came to power? I just need a yes or no on the answer. Did he tell you how he came to power?

Mr. DEGUERIN. Yes and no.

Ms. JACKSON LEE. Did he explain the 1987 incident?

Mr. DEGUERIN. Yes.

Ms. JACKSON LEE. Let me just repeat and that will be the wind-up of my question. And that is, in 1987, despite the facts that may be surrounding it, he came onto the compound in camouflage and there was a 45-minute gun battle. And I think that is distinguishable from Seventh-day Adventists who are, in fact, pacifists. So it may have been a spinoff of a denomination, but I think if we separate out Mr. Koresh and those passionate followers, his direction led in a more violent turn than, one, the Adventist Church, and as well, possibly the followers who were there with him by way of his entry as the leader into that compound.

Mr. DEGUERIN. To respond to that, that was not the way that he came to be the spiritual leader of the Branch Davidians. That was a dispute between David Koresh and his followers and a man named George Roden who was—well, who's been found by a jury to be criminally insane.

Ms. JACKSON LEE. I do understand the facts, but there was a gun battle, was there not?

Mr. DEGUERIN. There was a gun battle. And following that gun battle, David Koresh surrendered to the sheriff of McLennan County and surrendered all his guns, and he was tried on the charge of attempted murder. All the persons that were tried were found not guilty except for David Koresh who was—there was a hung jury, and the district attorney then dismissed the case.

Ms. JACKSON LEE. And I understand that. He just engaged in the gun battle even though the determination was different legally, but there was a gun battle David Koresh participated in. Thank you, Mr. DeGuerin.

Mr. ZELIFF. The Chair now yields to Mr. McCollum of Florida for 5 minutes.

Mr. MCCOLLUM. Thank you very much, Mr. Zeliff.

Early in this testimony today one of you, and I believe it was Mr. Zimmermann, indicated that you thought that a bureaucrat in Washington was responsible for ending the negotiations, that indeed the field officers of the FBI wanted to continue what progress you were making or what you thought was being made.

Did anyone with the FBI say anything to either of you—and I will start with you, Mr. Zimmermann—at any time which indicated that there was pressure coming from Washington to go with this CS gas assault as opposed to the negotiations?

Mr. ZIMMERMANN. Sir, my first knowledge of a CS and tank attack occurred at 6:15 in the morning on April 19 when my answering service called and said the phone is ringing off the hook with the press, and I turned on the television. And that's the first notice I had of that attack. They did not tell us in advance, of course.

Mr. MCCOLLUM. Did they give you any indication they were getting pressure not to negotiate?

Mr. ZIMMERMANN. No, sir. As a matter of fact, I have a recollection—and I understand now that there is some dispute about it by the FBI, but I have a distinct recollection, as does Mr. DeGuerin, that after we talked—gave them this information about the April 14th letter that they would be out within 2 weeks, they said they had all the time in the world.

Mr. MCCOLLUM. Why do you have the feeling that the bureaucrat in Washington was pressuring them or making this decision instead of somebody in the field going with the assault, recommending it back up the other way?

Mr. ZIMMERMANN. My earlier answer is that Jeff Jamar, as far as I know, had never been anything but straight with us. Bob Ricks had never been anything but straight with us. Bryon Sage had been nothing but straight with us. Why would they tell us we have all the time in the world?

Mr. MCCOLLUM. Same question to you, Mr. DeGuerin.

Mr. DEGUERIN. Let me say that I had an earlier conversation with Jeff Jamar in which he mentioned that some people had discussed or said something about dismantling the building and putting tear gas in, but that they weren't seriously considering that, and it was an offhand conversation. It was very early in my relationship with him. I never got the idea that he was under any pres-

sure to do anything other than to—I disagree with Jack a little bit on that. I just never got that idea.

Mr. McCollum. For what it is worth, in the Justice Department report on page 270 it says that Byron Sage, in an ensuing 2-hour conversation on April 15, apparently that he had, I guess, with the Attorney General, said further negotiations on the subject of the compound would be fruitless, and further advised Hubble in this case that Koresh had been disingenuous in his discussion with Sage about the seven seals. The FBI had not succeeded in getting anyone released from the compound through negotiation. It was at a total impasse, nothing more he or the negotiators could do to persuade Koresh to release anyone else would do any good, and law enforcement personnel at Waco were getting tired and their tempers were fraying.

And, in essence, this is all in support of what appears from this report to have been a decision that Sage at least was involved with making as early as April 12. Now, we haven't heard from them yet, but I am reading from the report.

Mr. DeGuerin. You said 12th or 15th?

Mr. McCollum. The 15th is when this phone call discussion was made, but the paperwork here for the pages that precede it show that the FBI apparently originated this plan and took it up with Potts and Clarke—or Potts and Clarke took it up, I should say, from the field as early as the 12th with somebody in the Attorney General's Office.

So it was around for quite a while, but it was being embraced as early as the 12th, and this phone conversation took place on the 15th. Is any of that surprising to you?

Mr. DeGuerin. I guess I can't say I'm surprised because I have read those reports and I see that that was going on at the time. What disturbs me, though, is that there was not—there apparently was not any input about this breakthrough that we had on April 14 and advice from——

Mr. McCollum. And nobody, apparently, passed that on to the Attorney General, and it doesn't look like it was passed on to the President either. We know this because there is a notation we have with us from the FBI files of interviews of Bruce Lindsey at the White House indicating that a meeting on April 15 took place in which he was briefed and presumably briefed the President on this very same thing, that the negotiations were absolutely at an impasse, they weren't going to go anywhere, and it was just over the hill.

Now, having said all that, I want to direct your attention somewhere else. The Treasury Department has been putting out more stuff here in the last hour or two. They say, with regard to this videotape that supposedly is missing, in a press release today, "that ATF originally planned to make a videotape of the warrant execution from the undercover house. The camera was set up in a window and connected to a VCR recorder.

"However, it appeared before arrival of the cattle trailers, the agents found that whenever they cued their radio microphone, the tape ejected from the VCR. For this reason, the VCR was never turned on. If a videotape operation would have been made, it would

have confirmed the evidence presented at the trial by the ATF, evidence in the media, that the Davidians fired first."

Does that enlighten you in way about what happened to this tape or is there another tape we are looking for aside from the one they are referring to?

Mr. DEGUERIN. It doesn't enlighten me, no. I just can't imagine, with the amount of money and preparation and planning that went into this massive raid, that the videotape didn't make it.

Koresh told me that he saw a video camera. There is a tape that I have here of Koresh talking to the negotiators in which he discusses what happened at the front door and how you guys have the tape. I saw the camera.

This tape was made on April 13. Jack and I both filed—I think we both filed—motions with the court to preserve this tape. I would like to have the opportunity to complete my answer and play the tape, but I don't want to take away from your time.

Mr. MCCOLLUM. Maybe the chairman will give you that.

I want to ask you one other question. You had indicated earlier in testimony that there were several times when Mr. Koresh had promised to go out or he had said he was going to come out or whatever and he didn't. And Mr. Schumer had asked questions, seemed to imply that he got a bunch of data, he wanted to have paperwork introduced that would go over those cases on earlier occasions, presumably leading one to the conclusion that why should he now, on April 14, live up to this commitment?

Could you run over, Mr. DeGuerin, for us, how you analyze the reasons why Koresh did not come out on the earlier occasions and what was different about this one?

Mr. DEGUERIN. I had difficulty understanding why he would not walk out with me and surrender to a Texas Ranger and get into the criminal justice system. He saw the logic of that and the advisability of that. And so I was having difficulty understanding why it was he wouldn't say, yes, I will go right now.

And I tried to understand that by understanding his religious doctrine, and I asked for advice from Arnold and Tabor. And what I learned was that more important to him, more overriding to him, was this religious doctrine, and when he could interpret the religious doctrine to say that it was consistent with him coming out and going into the criminal justice system rather than dying on the spot, he would.

And so my talks with him began to go more to that, to understanding that perhaps the doctrine didn't say you are going to die now, the Apocalypse is coming much later in years or much later than that, and that is why I think there was a breakthrough.

Mr. MCCOLLUM. Why didn't he come out earlier? That was the question I had asked earlier.

Mr. DEGUERIN. Yes, that's the answer, because of this overriding religious concern. I didn't agree with it. I am not trying to justify it, and I don't think it was justified. I wanted him out. I mean, this was—I wanted a live client in court. We had a defensible case, and I was trying to get him to come out and try to make him understand that he needed to.

But he wouldn't. He wouldn't, he said, because it wasn't written for him to come out yet. He was waiting to get that word. When

he did get the word, that is why I say it was such a great breakthrough on April 13 and 14.

Mr. MCCOLLUM. Thank you very much.

Mr. Chairman, can I ask unanimous consent that the piece of paper that has this press release on it about the videotape from the Treasury Department be admitted into the record?

Mr. ZELIFF. Without objection, so ordered.

[Information not received by time of printing.]

Mr. DEGUERIN. In order to complete my answer on that question, may I play that tape? It is about 2 minutes, and it is a tape that was made by the FBI. It is in the evidence here, as I understand it, and it will just take about 2 minutes. May I do that?

Mr. SCHUMER. Reserving the right to object.

Mr. ZELIFF. State your objection.

Mr. SCHUMER. We have had a rule against these kinds of things. The first little program was admitted. The rest are not. If we want to change the rules, we can, but we ought to go over them.

Mr. ZELIFF. Did you play a tape?

Mr. SCHUMER. Yes, and it was said that was not going to happen again. You did yours, we did ours, et cetera.

Mr. ZELIFF. Would you be willing to submit your tape for the evidence?

Mr. SCHUMER. I would just say that if we do this tape, we have other tapes that we would like inserted into the record, and as long as we will be allowed to insert our tapes, I have no problem with Mr. DeGuerin's tape. It is not the question of the tape—this tape or not. It is the question of basic fairness.

Mr. ZELIFF. Thank you for your concerns.

I think the Chair will just say this. If you will submit the tape for evidence, we will all, those of us that are interested, listen to the tape. Is that a fair process?

Mr. SCHUMER. Not here at the hearing but——

Mr. MCCOLLUM. Reserving the right to object so I can ask a question, I would just like to know, what is that tape really, Mr. DeGuerin?

Mr. DEGUERIN. It's a tape that was made by the FBI during the negotiations on April 13, the day before we got the letter in which he guaranteed that he was coming out, and it discusses what happened on March 28 at the door. It discusses that he saw a video camera that was filming what happened at the original raid.

Mr. ZELIFF. I would think that anybody who wants to get at the truth would be interested.

Mr. MCCOLLUM. We ought to hear the tape.

Mr. SCHUMER. I will simply say I will object unless I get the majority's consent. We have a bunch of tapes, both related to today and later, that are dispositive, and as long as we can do our tapes, I have no objection to you doing yours.

Mr. ZELIFF. It will be based on a particular tape at the time.

Mr. SCHUMER. Then I will object.

Mr. BARR. Mr. Chairman, I would like to have a parliamentary inquiry.

Mr. ZELIFF. State your inquiry.

Mr. BARR. When we had our discussion at the beginning of these proceedings and we decided because of objections by Mr. Schumer's

side to proceed under normal order, regular order, there was a discussion at that point, I think the chairman will recall this, about the rule under which tapes and other documentary evidence should be submitted. And my parliamentary inquiry, isn't it in the course of normal business, regular order, to allow that to be submitted or played or presented by a witness? And I am wondering on what grounds that would be objectionable.

Mr. SCHUMER. Continuing to reserve——

Mr. BARR. The parliamentary inquiry is to the chairman.

Mr. ZELIFF. The way I see it, we should submit the evidence and allow it to be played, as long as it's pertinent to what the discussion is at the time. I think at the same time, if Mr. Schumer has a tape later on in another panel——

Mr. BARR. Absolutely.

Mr. ZELIFF [continuing]. And a witness is presenting a piece of evidence, and it is pertinent, then we ought to take——

Mr. SCHUMER. Continuing my reservation—and that seems fair to me, and I will be willing to do that, it seems. But I just want the audience and everybody else, everyone on the majority and minority, today, certain members of the FBI wanted to bring tapes to the—related to the second or third panel. I am not sure which.

We had discussions with the majority's staff, and we were told that all tapes would be off limits, and, hence, they didn't bring them. Now, there are plenty. There are lots of other tapes, believe me, that we would like to play, and I just want to make sure——

Mr. BARR. Has the Chair ruled?

Mr. SCHUMER. No. Please, don't be rude, Mr. Barr. I am trying to get this done fairly.

Mr. BARR. You are not.

Mr. SCHUMER. Continuing my reservation. Continuing my reservation, please.

Mr. ZELIFF. We have heard your reservation. The Chair is prepared to rule and——

Mr. COBLE. Mr. Chairman, I would like to respond to Mr. Schumer's reservation briefly, if I may.

Mr. ZELIFF. Please proceed.

Mr. SCHUMER. Wait. Just if the gentleman would forbear, I was cut off by the gentleman from Georgia because he wanted a ruling. He is not cutting you off. He is cutting me off. Let me just finish my point.

Mr. BARR. I thought the Chair had ruled.

Mr. SCHUMER. The Chair has not ruled.

Mr. ZELIFF. The Chair is about to finish the ruling.

Mr. SCHUMER. Let me just finish my point, and that is this, that the majority staff had said no tapes and, therefore, those tapes, none henceforth, and we went along with that. The rules keep changing. I don't mind, but we need notice and fairness.

Mr. ZELIFF. My understanding of what happened is yesterday—I believe it was yesterday—you wanted to introduce a tape. My side didn't want to do it. We had introduced a CNN tape in the beginning. I said it was only fair to allow yours.

Now we have the third tape. I do not want to get into a tape war or a video war or any of the other kinds, so I think at this point the Chair will rule that the tape can be submitted for evidence.

Those of us that want to listen to it will listen to it, if that is a fair ruling. So without objection, so ordered.

Mr. BARR. Mr. Chairman, so is the ruling of the Chair that the playing of the tape is out of order? Is that the Chair's ruling?

Mr. ZELIFF. The playing of the tape is out of order. We will accept it as evidence.

Mr. BARR. I would object to the ruling of the Chair.

Mr. ZELIFF. OK. It requires unanimous consent to play it.

Mr. BARR. Unless you can enlighten me as to what the problem is with playing a tape.

Mr. ZELIFF. It requires unanimous consent to play the tape. An objection has been heard.

Mr. BARR. From who? I thought Mr. Schumer——

Mr. ZELIFF. Mr. Schumer objected.

Mr. BARR. I thought—and, again, I am not trying to butt in, but I thought that Mr. Schumer said as long as we treat his—if they wanted to submit a tape——

Mr. ZELIFF. I have a feeling, just knowing on past actions around here, not pointing any fingers, that we are going to have reams and reams of tapes and we are going to have video parades and everything else.

We are going to be here long, long hours tonight, well after midnight, and at the rate we are going, this is just another charade to slow things down. I think at this point it makes good common sense to just accept it as evidence and move on.

Mr. COBLE. Mr. Chairman. Mr. Chairman. Mr. Chairman. I know I am going to feel your wrath by doing this, but I will be very brief.

Mr. ZELIFF. Not you, Mr. Coble.

Mr. COBLE. I will be very brief about this. I would be uneasy about admitting this tape with an agreement that we would open the floodgates for everybody and his brother who had a tape from here on in. I do think, however, the Chair might want to consider hearing this tape and then subsequent tapes that may surface, consider each tape on its own bottom, rather than having a blanket endorsement that everybody who has a tape will come forward.

Mr. ZELIFF. We appreciate your comments. The Chair has ruled.

OK, your time is expired. I would just like to ask a couple questions on accountability.

Mr. Zimmermann, you talked about the Marine Corps. I have a son that is in the Marine Corps, and I can understand what you are talking about. I have also been in small business and large corporate entities, and accountability is the name of the game. Somewhere along the line somebody has got to be responsible. Who do you think is responsible for this tragedy that happened on April 19?

Mr. ZIMMERMANN. On April 19? The general is responsible for everything that happens in his or her command.

Mr. ZELIFF. The general is responsible. Anybody above the general?

Mr. ZIMMERMANN. In my view, the general is about as high as you go. I was talking in a military context.

Mr. ZELIFF. That's in the military.

Mr. ZIMMERMANN. Yes.

Mr. ZELIFF. Who is the general then at Waco?

Mr. ZIMMERMANN. Whoever made that decision, the final decision to go in on April 19 with that military attack.

Mr. ZELIFF. Who do you think did that?

Mr. ZIMMERMANN. I really don't know, sir. I mean——

Mr. ZELIFF. Mr. DeGuerin, what do you think?

Mr. ZIMMERMANN. If I may.

Mr. ZELIFF. Go ahead. We don't want to eat up the time.

Mr. ZIMMERMANN. Someone jumped up and said, "I'm responsible, the buck stops here," and gained a lot of public admiration for that stance but has never been held accountable, never been held accountable.

Mr. ZELIFF. Mr. Altman wrote a letter to Mr. Bentsen dated April 15 saying something tragic is going to occur on the 19th. The letter was disregarded. Is it problematic when you have people in Government where they find out about these things and do nothing about them?

Mr. ZIMMERMANN. It bothers me that something didn't get transmitted across, but it does not affect my earlier opinion that it was not the Secretary of the Treasury that was responsible, it was the Attorney General of the United States that was responsible.

Mr. ZELIFF. On April 14, did Jeff Jamar tell you that you have all the time necessary to end this peacefully?

Mr. ZIMMERMANN. Yes, sir.

Mr. ZELIFF. And what happened? What happened to that? I mean, did something just get yanked out of his hands?

Mr. ZIMMERMANN. The truthful answer to that is, I don't know what happened. My assumption was—is that that decision was overridden at higher headquarters, and if I could answer that, someone said something earlier about Byron Sage making a recommendation at an earlier point in time.

Byron Sage was an Assistant Special Agent in Charge in Austin. He was junior to both Jeff Jamar, who was a Special Agent in Charge out of San Antonio, and Special Agent in Charge Bob Ricks out of the Oklahoma City office. Both of them were senior to Byron Sage.

I find it incredible that a junior special agent like Sage would be able to make a decision of that significance.

Mr. ZELIFF. Mr. DeGuerin.

Mr. DEGUERIN. I thought about that because Byron Sage—excuse me—Jeff Jamar said to me when I was frustrated a little bit and told him that, "I wish I could say he's coming out today, but it's going to be a while until these seals get written," he said, "Don't worry, we've got all the time it takes."

Mr. ZELIFF. Do you think the FBI would have allowed Koresh to surrender to anybody other than the FBI?

Mr. DEGUERIN. Well——

Mr. ZELIFF. Was that discussed with the Texas Rangers?

Mr. DEGUERIN. It was discussed. It was never rejected. I thought it would be a good idea, because I wanted to see it happen, but I don't think that that is what caused there not to be a surrender.

Mr. ZELIFF. Describe your feelings after you heard that the raid had moved forward and that the gas was being put in. Both of you just describe how you felt. Were you helpless? Was there anything you could do?

Mr. DEGUERIN. I was shocked.

Mr. ZELIFF. Describe your emotions.

Mr. DEGUERIN. I was shocked. I was in north Texas getting ready to start a trial. I was certain that we had some time, and when I got the phone call to look at the screen and see what's going on, I immediately called the FBI. I wasn't able to reach Jamar.

The only message that I got—and I can't remember the name of the agent I talked to—was, "We don't need you." I said, "I'll come back down. I'll go back in. Just hold off. Let me see if I can tell him that you're out of patience." And I rushed from there to Waco. By the time I drove from Denton to Waco, everyone was dead, the fire was over.

Mr. ZELIFF. How did you feel about that? Did you just pull over the side of the road? What went through your mind?

Mr. DEGUERIN. Mr. Zeliff, I met most of the people in there. I met the children. I wanted to be part of helping to save their lives, and I——

Mr. ZELIFF. It had to be rough.

Mr. DEGUERIN. I felt that if I had been a little bit more persuasive I could have gotten David Koresh out of there quicker, and so I feel that I failed, but I also feel like it was a great mistake to start the tanks and tear gas.

Whether you accept that David Koresh started the fire and committed suicide with all of those people or whether it was accidental or not, there's one thing certain: Those people would be alive today if those tanks and tear gas hadn't started rolling on April 19.

Mr. ZELIFF. Mr. Zimmermann, same question.

Mr. ZIMMERMANN. Mr. Chairman, I was in Houston, TX, at the time that the operation began. I waited—I called, reached Henry Garcia, from the negotiation team, who had been sort of friendly with us when we were there. He answered the phone.

I said, "What's going on." He said, "Have you seen the television?" I said, "Yes. Are we still going to be part of the surrender plan?" because I thought at that time, like everybody else did, that people might come out after that.

He said, "I'm not at liberty to discuss the tactical plan, but go ahead and come on up." So I reached Dick, and he started down from Denton and I started up from the other direction, both 3-hour drives, and the fire broke out when I was still about 2 hours from Waco.

Mr. ZELIFF. How did you feel? And maybe each of you can also tell me, how did you feel the FBI must have felt? How did you feel? Sick?

Mr. ZIMMERMANN. How did I—I felt betrayed. I was hopeful. I was clearing my schedule. I thought they'd be out within another 10 days, and I could not believe that the FBI, or the Justice Department, or whoever it was, would undertake such a dangerous operation knowing that there were old men and pregnant women and children in there. I just couldn't believe that they would do that.

And then there was KTRH radio. A talk show had a live report from it. So I was on the road actually driving while that building was burning.

And I have to tell you, you won't hear this very often from defense lawyers, but I echo Mr. DeGuerin: I had a sense of failure unlike any I'd had before. Not that I've never failed before, but not where people who have put their lives in my hands died.

Mr. ZELIFF. The question was asked before the red light: How do you think the FBI felt?

Mr. ZIMMERMANN. My view was that, you know, I've had cynical remarks made to me after speeches, because Bob Ricks was up and it seemed to be almost with tears in his eyes, and people were saying, you know, all he was worried about was losing his job and his career. I don't believe that. I think he really did feel bad. I think he's a good—what I call a good cop.

Good cops don't really care too much about what happens to bad people or guilty people, but they sure do care about things like children and innocent people, and they don't like something like this to happen. My view was, that was a genuine remorse being displayed by Mr. Ricks.

I think Jeff Jamar had genuine remorse. After all, he was in charge. This was his operation. He was the scene commander. His career was over, and 80 people were dead because of something that was technically under his control, because he was the onscene commander.

I think the FBI felt terrible. I hope when that they come here they don't tell you that they didn't feel terrible.

Mr. DEGUERIN. My response, Mr. Zeliff: I saw Bob Ricks at the press conference that followed the fire, and he did have a break in his voice, a frog in his throat, if you will. I think he was sincere, and I called him after that. We had had a good relationship.

I said, "Mr. Ricks"—I think I called him Bob—"my heart goes out to you. I know that you didn't intend for it to end this way. I'm going to be critical of you, I'm going to be critical of the decision, but it's not personal, and I'm sorry that it ended this way."

Mr. ZELIFF. And it may not have been his decision.

This concludes this panel. We thank you both very, very much. We will resume at 5 minutes after the next vote, and, again, I think we are going to go a ways, but we will adjourn until 5 minutes after the next vote.

[The prepared statements of Messrs. DeGuerin and Zimmermann follow:]

1

PREPARED STATEMENT OF DICK DEGUERIN, LAWYER FOR DAVID KORESH

TO THE CHAIRMEN AND THE COMMITTEES:

INTRODUCTION

I am proud to be a criminal defense lawyer. I am in the business of helping people in trouble. On February 28th, 1993, and for fifty-one days after that, there was no one in the United States in more trouble than David Koresh, so when his mother, Bonnie Haldeman, asked me to help her son I agreed to do it.

FIRST STEPS - CONTACT WITH FBI

Often a lawyer is hired by family members or friends of a person in trouble; often the person is unable to make the phone call himself. Sometimes a person has not yet been arrested. It's the duty of the lawyer in such a situation to establish communication with his client and to arrange a safe surrender into custody; it is also the lawyer's duty to find out as much as he can about the client, the circumstances of the crime, and the facts of the case. I arranged to meet Bonnie Haldeman in Waco to take her with me when I went to the FBI command post to ask for access to David Koresh. Mindful of the numerous lawyers swarming around Waco, I wanted Bonnie with me to prove my credentials as authorized to represent her son.

I received a polite, but firm, "Don't call us -- we'll call you" from the FBI. So I filed a petition for writ of habeas corpus in the Federal Court in Waco seeking only access to Koresh. In the meantime I corresponded (**See**, Exhibits 1 - 5) with Special Agent-in-Charge Jeffery Jamar in an effort to convince him that we had parallel interests: the FBI wanted a safe and peaceful resolution, with Koresh in custody, and I wanted my client to survive and get into court.

MARCH 28 - FBI CONTACTS ME

On March 28th, after the district court denied habeas corpus and before I was able to appeal to the Court of Appeals in New Orleans, Mr. Jamar and the FBI contacted me and told me they would put me in touch with David Koresh, first by telephone hookup, and then, perhaps, in a face-to-face meeting.

MARCH 28 - FIRST CONTACT WITH KORESH

On the evening of March 28th, I talked with David Koresh on the telephone and recorded our conversation. To my pleasant surprise, I found him reasonable, rational, and with a good understanding of his predicament. He wanted my help and I agreed to come to Waco to meet with him.

On Monday, March 29th, I travelled to Waco and to the FBI command center where I was again allowed to speak to David Koresh on the telephone. We arranged to meet face-to-face that afternoon.

RELATIONSHIP WITH FBI

I must say that the FBI agents with whom I met were cordial, polite and respectful. They included Special Agent-in-Charge Jeffery Jamar, Special Agent-in-Charge Bob Ricks, Assistant Special Agent-in-Charge Byron Sage, and Special Agent Clint Van Zandt, among others. I realized there was probably strong internal debate within the FBI about Mr. Jamar's decision to allow me, a criminal defense lawyer, to go to Mount Carmel; criminal defense lawyers are not too popular with most FBI agents. It was a courageous and correct decision on Mr. Jamar's part, and I believe he made that decision because he understood that my advice to Koresh would be to peacefully surrender to the warrant.

MARCH 29 - FACE-TO-FACE WITH KORESH

In the afternoon of March 29, I met with David Koresh, Steve Schneider, and Wayne Martin, at the front door of Mount Carmel. I was taken to within 100 yards of the front door in the back of a Bradley tank, accompanied by Agent Sage. I met with Koresh, Schneider and Martin for about two hours and discussed their predicament and the facts of the raid. I was able to observe at length the front door, (See, Photo Exhibits 6 - 9) the front area of Mount Carmel, and the approach to it. I saw the bullet damage to the building in some detail. The thrust of my meeting on the 29th was to establish trust between David and myself, as well as any other persons at Mount Carmel. I obtained a handwritten Power of Attorney. (See, Exhibit 11) The meeting went well and in my discussions with Mr. Jamar, Mr. Ricks, and Mr. Sage, we agreed that I would return the next day, go inside the building, and meet further.

MARCH 30 - INSIDE MOUNT CARMEL - MEETING THE CHILDREN

On Tuesday morning, March 30th, I went inside Mount Carmel and met many of the Branch Davidians, including David's ceremonial wife and their son, Cyrus, as well as David's other children and their mothers. They were beautiful kids. I talked with witnesses about the raid on February 28th and was shown around the building. (**See**, Exhibit 10) The FBI had instructed me I must leave the building at noon but could return in the afternoon. I used the noon break to request a meeting with Sheriff Harwell so I could learn, and pass onto David and the others, what the circumstances of their confinement would be when they surrendered. I want to emphasize I was not negotiating terms, simply finding out the facts so I could advise David and the others. After meeting with Sheriff Harwell I returned for an afternoon session and was treated to a Bible lesson by David and intense discussions about their situation.

MARCH 31 - INSIDE MOUNT CARMEL - INTENSE DISCUSSIONS

On Wednesday the 31st, I again went into Mount Carmel. In the morning David was too sick from his wounds to participate in the discussions I had with Steve Schneider and Wayne Martin. After the lunch break I went back in and had more intense discussions. At one point I thought we were on the verge of a real breakthrough and he would walk out with me that day. He saw the logic and utility of doing so but seemed to collapse in his inability to make me understand that he and the other Davidians saw no difference between theology and reality. That afternoon I expressed my frustration to members of the FBI negotiating team but at the same time my optimism that a peaceful surrender would occur.

CONDITIONS OF SURRENDER - NO ATF AGENTS

In my discussions with the FBI I wanted to learn exactly what would happen when Koresh and the others surrendered. Although I did not negotiate terms, one thing was clear: neither Koresh nor the others would surrender to the ATF. Furthermore, I was concerned that if the ATF were given any authority following the surrender the integrity of the scene could not be trusted. In simple terms, I thought it likely that the ATF would "salt" the scene with incriminating evidence. I expressed these concerns to the FBI, and to the Texas Rangers. Ultimately, I was assured that the ATF would have no responsibility in the surrender or in the investigation that followed except for an ATF bomb expert to "sweep" the building following the surrender and that even then the expert would be accompanied by a Texas Ranger to ensure the integrity of the scene.

SURRENDER TO THE TEXAS RANGERS

I was glad that the Texas Rangers had been called to participate in the investigation. The FBI told me that the Rangers would have complete authority and that neither the FBI nor the ATF would have any responsibility in investigating the deaths of the four ATF agents on February 28th and the wounding of the others; rather, the Rangers would have such responsibility. I passed this on to David and the others and they likewise were relieved. I proposed to David that he surrender to a Texas Ranger. I talked with Capt. Maurice Cook about the prospect of having a Texas Ranger walk up to Mount Carmel with me and accept David's surrender. Capt. Cook was agreeable but cautioned me that the authority for that must come from the FBI. I proposed it to Jamar and Ricks but did not receive an enthusiastic response. In fairness to them, they did not reject it, either.

APRIL 1 - INSIDE MOUNT CARMEL WITH JACK ZIMMERMANN WITNESS INTERVIEWS, VIEW OF THE SCENE GUNFIRE FROM THE HELICOPTERS

On April the 1st Jack Zimmermann accompanied me to Mount Carmel. We remained inside all day and Jack and I together toured the building to inspect the damage and to see for ourselves the people there and to interview witnesses. I walked through the entire building and saw the interior of most of the rooms. I was in the attic between the front and the gymnasium; I saw the bullet holes in the ceiling of David's fourth floor bedroom -- made by the gunfire from the helicopters; I saw the "gun room" where a firefight had taken place; I saw bullet holes in almost every room; and almost every window on the front of the building had been shot out. I saw the women, the children, and the elderly. I saw among them a sense of serenity.

I THREATEN TO RESIGN

David, Steve Schneider and Wayne Martin promised us that they would have some word on when they would "come out" after Passover. I was frustrated and could not understand why David and the others would not come out now. I was so frustrated that I returned the Power of Attorney to David and told him if he didn't take my advice I couldn't be his lawyer. The meeting ended that day with David asking me not to resign as his lawyer and I told him I would think it over.

RELIGIOUS EXPERTS - DR. PHIL ARNOLD AND DR. JAMES TABOR

During the week I met several times with Dr. Philip Arnold and spoke with Dr. James Tabor. Drs. Arnold and Tabor had been trying to get the FBI to listen to their knowledge about the Branch Davidians. Both had studied unconventional religions. I consulted often with Dr. Arnold in an effort to understand David. Dr. Arnold

was very helpful. After reconsidering my "threat" to resign, I realized that it was unfair for me to demand an absolute date of surrender under threat of resignation and I asked the FBI to allow me to return to Mount Carmel and to speak with David one more time.

APRIL 4 - LAST FACE-TO-FACE MEETING

On April 4th, Jack Zimmermann and I returned, had an excellent meeting and resolved that we would remain as David Koresh and Steve Schneider's lawyers. We were to return following Passover.

APRIL 14 - A MAJOR BREAKTHROUGH

On April 13th and 14th, Jack Zimmermann and I returned to Waco and talked on the telephone with Steve Schneider. On the 14th, Schneider told us that there had been a major breakthrough, that David Koresh had received the "message from God" he had been waiting for and that everyone at Mount Carmel was relieved and joyous to know that the standoff would be resolved within a few days. David was to complete his manuscript interpreting the Seven Seals of the Book of Revelations and upon completing it he would surrender and go into the criminal justice system. He put this promise in writing. (See, Exhibit No. 12) I delivered a copy of this letter to the FBI and to Tabor and Arnold, who likewise saw it as a major breakthrough. I was relieved that I could now concentrate on preparing his defense because I believed that he would soon complete his tasks and surrender into custody. We worked out the details of how that would occur. In my last conversation with Agents Jamar and Ricks I told them that I was sorry that David was not to surrender today but that I believed he was sincere about surrendering once the manuscript was complete. Bob Ricks expressed some impatience, but Jamar shushed him and said, "We have all the time it takes."

APRIL 19 - THE FINAL ASSAULT

On April 19th, I was in far north Texas when I learned that the tanks had started an assault on Mount Carmel inserting CS gas. I called the FBI command center and offered to come back to Waco, to go back into Mount Carmel and try to get David to come out immediately. I was told I would not be needed. I left Denton anyway but by the time I got to Waco, Mount Carmel had burned to the ground.

INTERVIEWS WITH SURVIVORS

I interviewed several of the survivors in the McLennan County Jail and was told by each of them that they had been overjoyed at the prospect that David had received his message from God and that the standoff would soon be over. Ruth Riddle told me that the manuscript he was working on had been put by her on a floppy disc which she kept in her coat when she escaped from the fire. At my

request the Texas Rangers retrieved that disc and, sure enough, it contains David's work. He was on his way to completing the task when the final assault occurred. I was also told by the survivors I talked to, and through the lawyers for other survivors, that there was no plan for mass suicide, that they believed the fire started accidentally, and that most of the people on the inside were trapped by the rubble. I was told that the last few hours was pandemonium; that there was praying and screaming and a desperate attempt to avoid the effects of the gas, but I was also told that the strong armed tactics simply served to strengthen their resolve to remain in their home.

I was told in my interviews that the first gunfire came from the helicopters and that the helicopters strafed the building. I saw evidence of that and can tell you about it. I was told that David came to the front door on February 28th and was met by a hail of gunfire from the ATF agents. I saw evidence of that and can report that to you.

CONCLUSION - A PREVENTABLE TRAGEDY

I saw in David Koresh not a person who was insane, a person who was deeply committed and sincere about his religious beliefs. I do not seek to sanitize or to justify his actions, but I believe that the tragedy at Waco could have been avoided. I believe that the ATF, with their plans for a military assault against a building that held over a hundred innocent people should be held accountable for the deaths of their own agents as well as the Davidians who died in that original assault. The ATF's use of excessive force created the original tragedy on February 28th. I believe that the final tragedy could have been avoided had the FBI and the Justice Department not resorted to the tank and tear gas assault, but had waited until David and his followers came out voluntarily.

Finally, I believe that only by a careful and open examination of the tragedies and lessons of Waco can we restore confidence in our Government and our law enforcement agencies. We must be able to trust and control these agencies; and we must have confidence that investigations will be fair, just and result in discipline for those responsible. Otherwise the tragedy of Waco will happen again.

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AREA CODE 713
TELEPHONE 223-5959
FACSIMILE 223-9331

March 11, 1993

Sent by Facsimile to 512-346-5265
Austin Office of the F.B.I.
Jeff Jamar
Special Agent In Charge
Federal Bureau of Investigation
San Antonio, Texas

Dear Agent Jamar:

I've been asked by Mrs. Haldeman, the mother of David Koresh (formerly Vernon Howell), to represent her son and to advise him regarding his legal difficulties. I need to meet with my client immediately. Last night Mrs. Haldeman and I came to the Command Post located at the former Air Force base and spoke with Agent Bob Zain of the F.B.I. and Agent Christ Heart of the Alcohol, Tobacco and Firearms Division of the Treasury Department who told me that you requested that I write this letter.

I need to meet with Mr. Koresh immediately. In order to be fully informed about the legal difficulties he faces, I request that you inform me of any pending or contemplated federal or state charges against him. I am available and willing to go into the compound at Mt. Carmel in order to meet with him right away.

I can be reached through my office in Houston at 713-223-5959. While in Waco I am temporarily staying at the Hilton Inn, 817-754-8484, Room 1001, and I have a cellular phone through which I may be reached at 713-824-6210.

Please let me have your earliest response.

Yours very truly,

Dick DeGuerin

DD/ejd

cc: Bill Johnston
Assistant United States Attorney
Waco Division
Sent by Facsimile to 817-757-6244

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March 13, 1993

Sent by Facsimile to 512-346-5265
Austin Division of the F.B.I.

Jeff Jamar
Special Agent in Charge
Federal Bureau of Investigation
San Antonio, Texas

Re: David Koresh (formerly Vernon Howell)

Dear Special Agent Jamar:

I called you this morning to inquire as follows:

(1) Whether you had told my client, David Koresh, that his mother, Bonnie Haldeman, had engaged me to represent him, as you assured me you would do as soon as the F.B.I. was in contact with Mr. Koresh;

(2) if so, what his response was; and

(3) whether you maintain your position that you will not allow access between Mr. Koresh and me as his counsel.

I received a message from you that I should direct any inquiry through the United States Attorney's Office rather than you, and you left the name of Assistant U. S. Attorney John Phinitzy and the phone number of 817-757-6245. As soon as I got this message I called Mr. Phinitzy and told him what inquiries I would like to have made to or through you. Shortly after that, I received a call from John Convery, an Assistant U. S. Attorney, who told me that I should deal directly with you and that if you told me to deal with the United States Attorney's Office you were wrong.

I want to maintain a reasonable line of communication between myself and whomever can or will authorize contact between me and my client. I don't want to be passed back and forth between you and the United States Attorney's Office like a hot potato. As in any criminal case, an attorney representing a client sometimes deals with the authorities (the law enforcement agency and/or the prosecutor's office) or requests relief from the court, or both.

I intend to do both. I do not believe in running to the media as an alternative to the work a lawyer has to do. I have dealt with you in good faith, and I simply request that you do the same.

I ask that you and the United States Attorney's Office decide who is authorized to deal with me and maintain that line of communication. I don't seek to interfere in your duties; I only seek to discharge my responsibilities to my client.

Please respond.

Yours very truly,

Dick DeGuerin

DD/ejd

cc: Sent by Facsimile to 817-757-6244
Mr. John Phinitzy, AUSA
Mr. John Convery, AUSA
Mr. Mark Frazier, AUSA
Waco Division, U. S. Attorney's Office

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March 19, 1993

- SENT VIA FACSIMILE -

Jeff Jamar
Special Agent In Charge
Federal Bureau of Investigation
Austin, Texas 78759

Re: David Koresh

Dear Agent Jamar:

I understand from the news conference this morning that your agents have delivered to the inside of the compound several letters from lawyers or family members directed to those inside the compound. I am enclosing a letter that I wish to have delivered to David Koresh.

I have been attempting to deal with you in good faith and without complaining to the media. Whatever complaints I have, I intend to direct to the Court or to you directly. It is for that reason that I am very disappointed that you have failed to contact me to give me the opportunity to correspond with Mr. Koresh, even though you are aware that his mother has engaged me to represent him and that I want to communicate with him. I hope this isn't an indication that you are attempting to freeze me out. I need only reiterate that perhaps the most common way an attorney is engaged for a defendant is by a family member, as I was in this case, to emphasize that I have a legitimate standing and obligation as Mr. Koresh's attorney unless and until he personally makes known to me that he rejects my representation.

That said, I request that you deliver the attached letter to Mr. Koresh.

Yours very truly,

Dick DeGuerin

DD:kl
Enclosure

cc: John Convery (via facsimile)
Assistant U.S. Attorney

Jack Zimmerman (via facsimile)

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March 24, 1993

Sent by Facsimile to 512-346-5265
Austin Division of the F.B.I.

Jeff Jamar
Special Agent in Charge
Federal Bureau of Investigation
San Antonio, Texas

Re: David Koresh

Dear Agent Jamar:

Has my letter to David Koresh, dated March 19, 1993, been delivered to him? If so, when was it delivered? What was his response? I would appreciate hearing from you.

I stand ready to assist in any way I can, consistent with my responsibilities to my client, to bring this intolerable situation to a peaceful resolution. I believe, as do Jack Zimmerman, Jim Levine and other responsible lawyers retained by families of persons inside Mount Carmel, that competent advice from a lawyer can only serve to reassure those inside the compound that they will have their day in court and that their rights would be protected. I think they need to hear this from their own lawyers.

Please respond.

Yours very truly,

Dick DeGuerin

DD/ejd

cc: John Convery (via facsimile)
Assistant U. S. Attorney

Jack Zimmerman (via facsimile)

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AREA CODE 713
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FACSIMILE 223-9231

April 7, 1993

Via Facsimile (210) 978-5380

Mr. Jeff Jamar
Special Agent in Charge
Federal Bureau of Investigation
San Antonio, Texas

Dear Mr. Jamar:

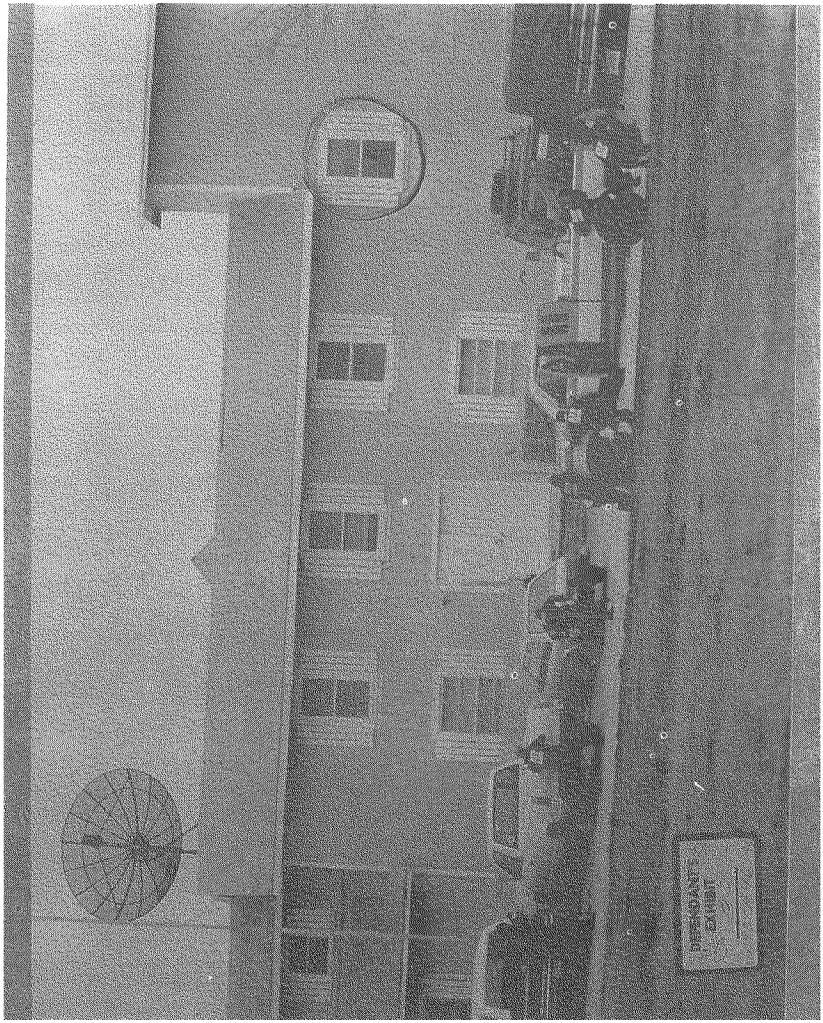
Please take this as simply a personal note of appreciation for the professional manner and courtesy with which you, Bob Ricks and Byron Sage have treated me. In that same vein, and with no offense intended, I pass along the enclosed cartoon from the New Yorker of March 8.

Sincerely yours,

Dick DeGuerin

DD/psp

"Has anyone considered that maybe his dress was a disguise?"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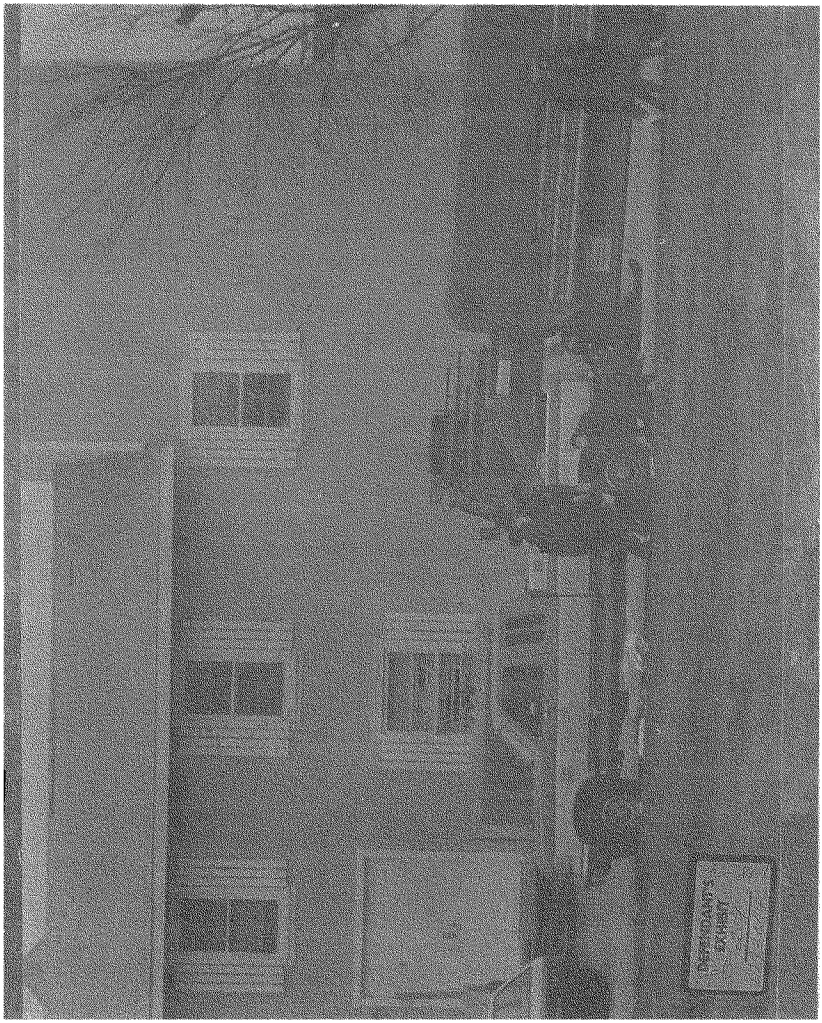

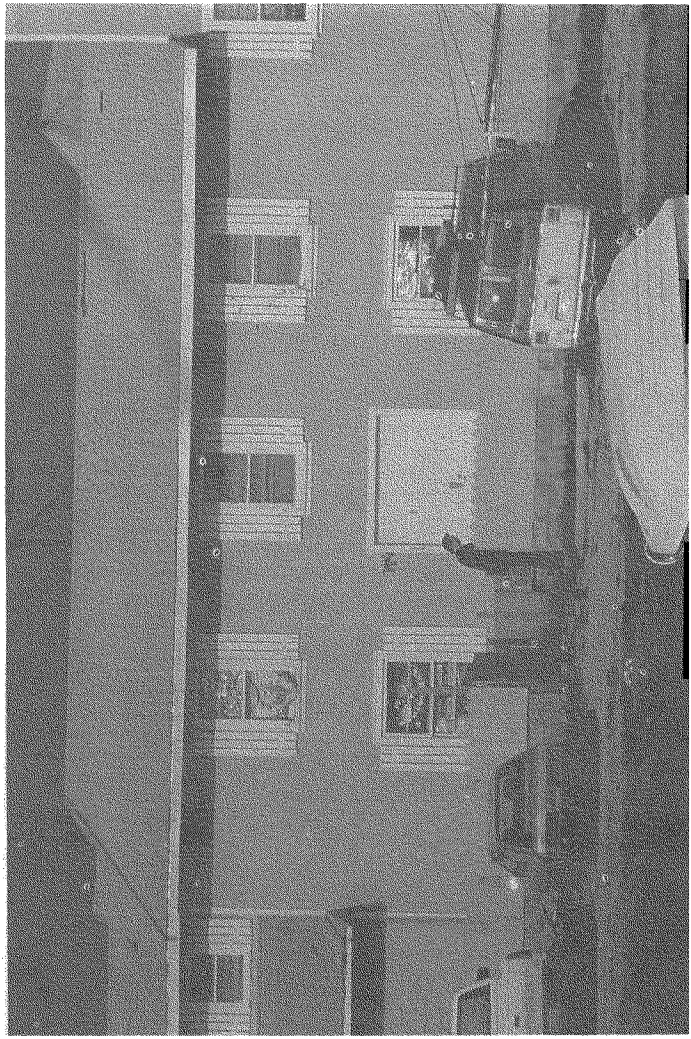

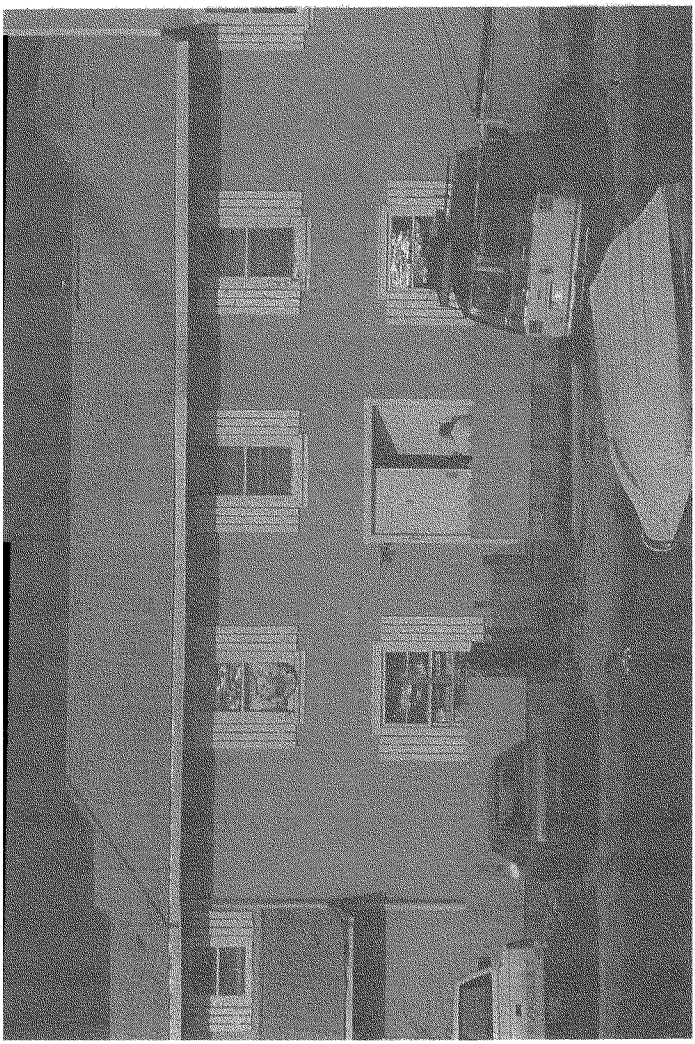

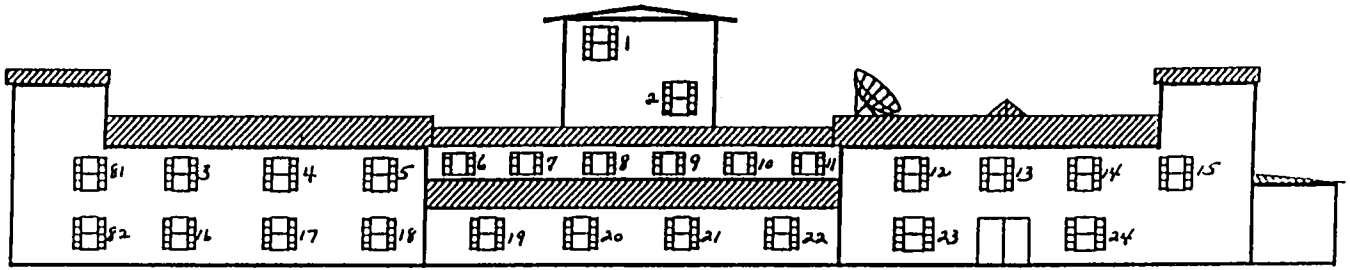
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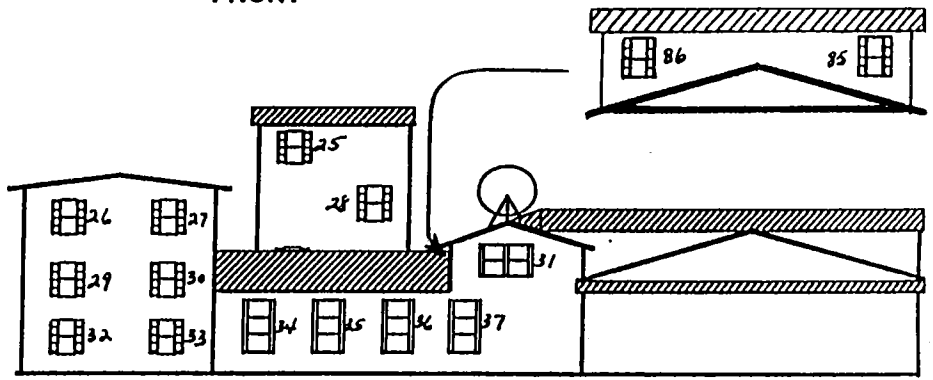
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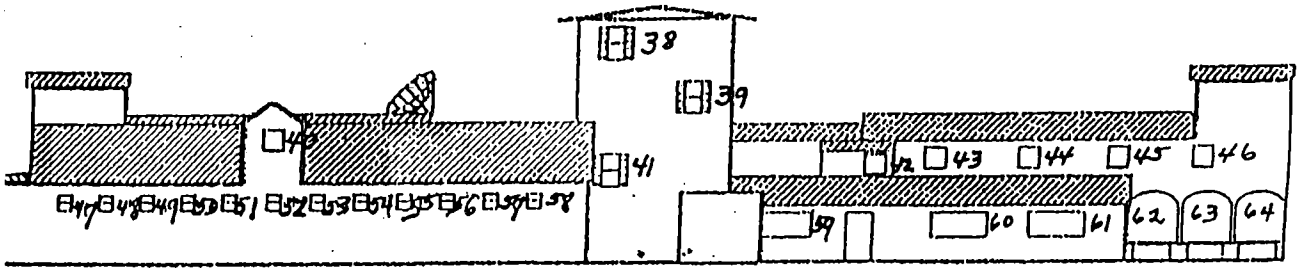
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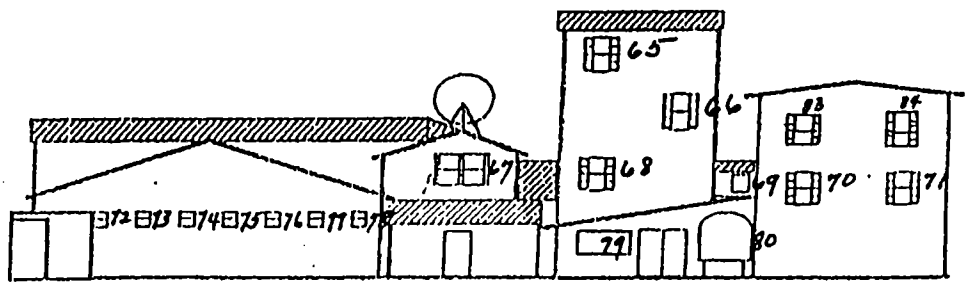
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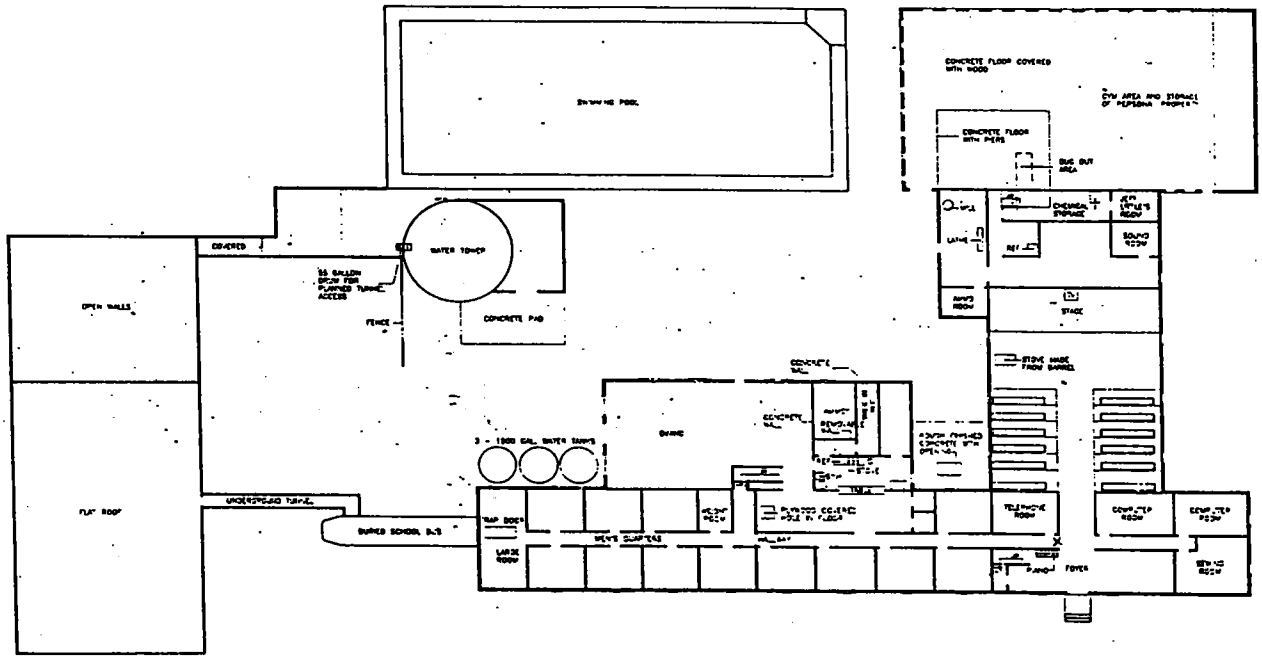
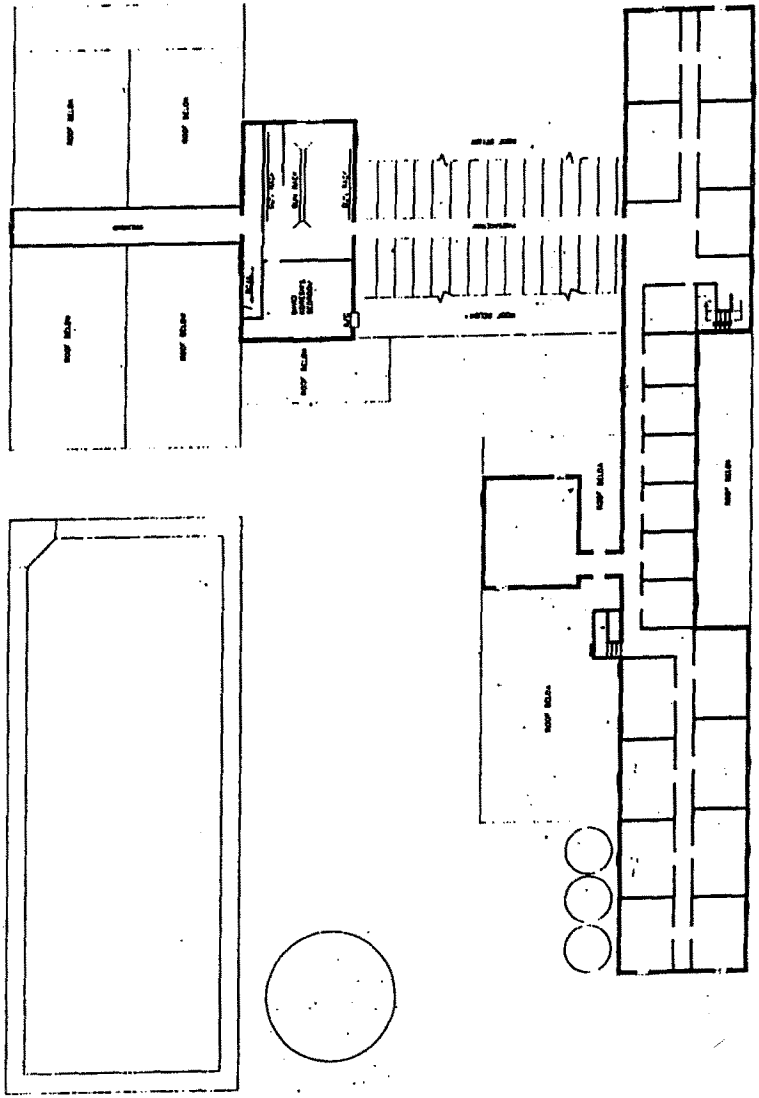


FIRST FLOOR PLAN

MOUNT CARMEL COMPOUND

Revised 04/22/93



SECOND FLOOR PLAN

I hereby authorize Dick DeGuerin to represent me in all matters arising out of the assault on my home at Mount Carmel on Feb 28, 1993 and all related charges, arising before, during, or after Feb 28 1993

David Koresh
DAVID KORESH
29 March 93

April 7th, 1993

Hello Dick,

As far as our progress is concerned, here is where we stand: I have related two messages, from God, to the F.B.I.; one of which concerns present danger to people here in Waco.

I was shown a fault line running throughout the Lake Waco area. An angel is standing in charge of this event. Many people, here in Waco, know that we are a good people, and yet, they have shown the same resentful spirit of indifference to our "warnings of love."

I am presently being permitted to document, in structured form, the decoded messages of the 7 Seals. Upon the completion of this task I will be freed of my "waiting period." I hope to finish this as soon as possible and to stand before man to answer any and all questions regarding my actions.

This written Revelation of the 7 Seals will not be sold, but is to be available to all who wish to know the Truth. The Four Angels of Revelation 7 are here, now ready to punish foolish mankind; but, the writing of these Seals will cause the winds of God's wrath to be held back a little longer.

Doe 1

1-14-93

I have been praying so long for this opportunity; to put the Seals in written form. Speaking the Truth seems to have very little effect on man.

I was shown that as soon as I am given over into the hands of man, I will be made a spectacle of, and people will not be concerned about the truth of God, but just the bizarrity of me — the flesh (person).

I want the people of this generation to be saved. I am working night and day to complete my final work of the writing out of "these Seals."

I thank my Father. He has finally granted me the chance to do this. It will bring New Light and Hope for many and they will not have to deal with me the person.

The earthquake in Waco is something not to be taken lightly. It will probably be "the thing" needed to shake some sense into the people. Remember Dick, the warning came first and I fear that the F.B.I. is going to suppress this information. It may be left up to you.

I will demand the first manuscript of the Seals be given to you.

Doc 2

-14-93

Many scholars and religious leaders will wish to have copies for examination. I will keep a copy with me. As soon as I can see that people like Jim Tabor and Phil Arnold have a copy I will come out and then you can do your thing with this Beast.

I hope to keep in touch with you by letter, so please give your address.

We are standing on the threshold of Great events! The 7 Seals, in written form are the most sacred information ever!!

David Koresh

David Koresh

DOC-3

Oct. 8, 1993
pg. 313-328

Audrey Martinez

Audrey Martinez was buried alive inside the bunker. She died of suffocation. She was identified from dental records. She was 13 years old.

Doe 59

Doe 59, a 14-19 year old girl, died of blunt force craniocerebral trauma. Her body was found in the bunker.

Doe 64

Doe 64, a one year old girl, died of smoke and carbon monoxide inhalation. Her body was found in the bunker.

Doe 67-2

Doe 67-2, a 7-8 year old boy, was buried alive and suffocated in the bunker.

Doe 70

Doe 70, a 2-3 year old female, died of suffocation in the bunker.

Doe 74

Doe 74, a 7-8 year old child (sex undetermined), died of unknown causes. The body was found in the bunker.

Doe 63

Doe 63, a one year old girl, died of craniocerebral trauma due to a blunt force injury. Her body was found in the bunker.

Doe 67-7

Doe 67, a two year old child (sex undetermined), died of uncertain causes, probably trauma, asphyxia, or suffocation. The body was found in the bunker.

Doe 62

Doe 62, a one year old child (sex undetermined), suffocated in the bunker.

Doe 69

Doe 69, a one year old baby (sex undetermined), died of smoke and carbon monoxide inhalation. The body was found in the bunker.

Doe 67-1

Doe 67-1, a 5-6 year old girl, died of smoke and carbon monoxide inhalation. Her body was found in the bunker.

Joseph Martinez

Joseph Martinez died of smoke and carbon monoxide inhalation. His body was found inside the bunker. His body was identified from dental records. He was 8 years old.

Doe 67-4

Doe 67-4, a 1-2 year old female, died of smoke and carbon monoxide inhalation. Her body was found in the bunker.

Doe 65

Doe 65, a baby girl, died of smoke and carbon monoxide inhalation. Her body was found in the bunker.

Doe 67-6

Doe 67-6, a 14-18 year old girl, was buried alive and suffocated in the bunker.

PREPARED STATEMENT OF JACK B. ZIMMERMANN, ATTORNEY FOR STEVE SCHNEIDER

ZIMMERMANN & LAVINE, P. C.
ATTORNEYS AT LAW
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HOUSTON, TEXAS 77056
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FAX 713-552-0746

JACK B. ZIMMERMANN
BOARD CERTIFIED
CRIMINAL LAW
NATIONAL BOARD OF TRIAL ADVOCACY &
TEXAS BOARD OF LEGAL SPECIALIZATION

Written Opening Statement of
Jack B. Zimmermann

Dear Members of the Oversight Committees:

On the afternoon of April 19, 1993, just after the tragic fire, I began calling for Congressional hearings into the conduct of all parties involved in the Waco matter. It is gratifying that you are conducting an investigation, so that this nation can avoid repeating what happened at Mt. Carmel in 1993. As a democratic country, we must learn from these events so that the same result will not occur should there be a similar situation in the future.

Within weeks of the fire, as one of two non-law enforcement, non-Branch Davidians to personally inspect the inside of Mt. Carmel Center and interview Branch Davidians who are now deceased, I wrote down my thoughts in an opinion piece entitled "The Legacy of Waco: The Demise of ATF and FBI Integrity." I recorded my thoughts and observations, fresh in my mind then after only a few weeks had passed, and I made certain predictions.

I choose to use "The Legacy of Waco" as my opening statement here, and will add the enclosed Update, based on events which developed or were released after the original writing in May 1993.

Very respectfully,

Jack B. Zimmermann

JBZ/slm

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May 1993

THE LEGACY OF WACO: THE DEMISE OF ATF AND FBI INTEGRITY

America was fascinated by what appeared to be a number of "firsts" seen on our television screens from Waco: ATF agents in combat gear smashing a window and entering a building to shoot at people shooting back; media reports that a fellow was claiming to be Jesus Christ, and had over a hundred followers who were resisting calls to surrender; a siege of an American home and church by FBI agents, driving military armored personnel carriers and tanks; the largest encampment of television, radio, newspaper, and magazine reporters in recent memory; men, women, and children leaving the home, with the adults later appearing in jail suits, chained at the wrists, waist, and ankles; a new vocabulary: "compound" instead of home, "cult" instead of religious group, "religious fanatics" led by a "false messiah" instead of dedicated followers of a charismatic teacher; defense lawyers going inside the surrounded home to advise the two leaders of the group to come out; the news that someone was going to reveal the secrets of the Bible's Seven Seals; the image of an American armored tracked vehicle smashing through the living room door of an American home; and the horrible scene of a wooden building containing over 90 human beings consumed by an inferno, with only nine adults able to escape.

These unfortunate mental images raised many questions, but very few satisfactory answers have come to light. On one side, citizens asked: Why did this "cult" exist in the first place? Why did they amass so many weapons and so much ammunition? Were the weapons all legal, or did they in fact convert legal weapons into illegal ones? Why did the men, women, and children remain so under the control of the leader? Why weren't the children sent out once the siege began? Why didn't they all come out when they said they would? Were the lawyers used as a stalling tactic? Was the decoding of the Seven Seals ever begun at all? Did everyone commit mass suicide? Were some people murdered to prevent their escape?

Other citizens asked: Why was it necessary for the ATF to mount a paramilitary assault using automatic weapons and grenades to serve an arrest and search warrant? Why was 9:30 on a Sunday morning chosen as the time of the raid, a time when all adults who worked away from Mt Carmel were at home, as were the school-age children? Why didn't they arrest Koresh on one of his frequent trips to jog or go into town? Why did the AFT shoot five Malamute dogs and let them whine and cry within sight and hearing of the children until their pets eventually died? Why did the FBI use psychological warfare "torture" techniques such as blaring at night sounds of rabbits

being slaughtered or a phone off the hook, at a building containing over two dozen children? Why as the children watched were their bicycles and tricycles crushed by the FBI armored vehicles? Why did the FBI publicly announce that they had all the time that was necessary to resolve the matter peacefully, but then launch a physical assault by armored tracked vehicles tearing away huge portions of the building? Why did the FBI deliver typewriter ribbons on Sunday afternoon so the Seven Seals could be typed, then attack twelve hours later with five minutes warning? Why did the FBI use debilitating CS gas, banned for use by military combatants against enemy soldiers, knowing there were 17 young children inside who were too small to have gas masks that could fit? Why did the FBI need to smash the structural integrity of the clapboard building, collapsing walls, ceilings, and roofs in order to insert CS gas? Did the FBI forget that they had cut off the electricity for over a month, and the light sources inside the building were Coleman camping lanterns burning fuel? Did the FBI forget that bales of hay - which were extremely flammable - were placed at most windows to protect the inhabitants from cold, rain, and wind? Did the FBI not know that the weight of a multi-ton armored vehicle would shake the earth, the flimsy foundation, and the structure of the building itself - especially once it penetrated the building? Did the FBI forget that there were dozens of one-gallon cans of lantern fuel, a generator with stored fuel, and other flammable liquids and propane gas inside? Did the FBI not calculate that a spark from the armored vehicle crushing metal inside the building, or knocking over a lighted lantern, would immediately start fires wherever the sparks flew? Did the FBI forget to calculate the effect on a small flame of 30 mile per hour winds whipping through gaping holes in the structure? Did the FBI, which had placed the hospitals, the neighbors, and the media encampment on alert, forget to bring the fire department up before running the risk of fire? Why was the fire completely out of control before fire trucks arrived? Once the stair wells collapsed, and people were trapped in the upstairs interior rooms, how were they supposed to exit to avoid the CS gas, even if they wanted to and no fire existed? Why was the building destroyed? Why did the children die?

Some of these questions can never be answered. To me, as an American citizen, there are even more troubling questions: Was there enough danger to society posed by the Branch Davidians to justify a military assault, or did their "offbeat" religious voices subject them to a different test by the authorities? Why did the Justice Department feel compelled to put a cover-your-ass spin on every development before the facts were known? Examples: within 35 minutes, the Justice Department announced from Washington that two "cultists" confessed to starting the fire. By that night, after everyone in the country who had followed the fire was enraged that the children were murdered by their parents, the truth was released: No one had confessed to any such thing. How many heard the retraction? Then that same night, the Attorney General made the talk show rounds, claiming 1) they had hard intelligence that the children were being beaten during the previous week or so and were living in horrible hygienic conditions, 2) the FBI agents were becoming fatigued, and 3) the Davidians weren't ever coming out voluntarily. Thus, the "non-aggressive action" was authorized. I call a tank

smashing into a living room extraordinarily aggressive. But the spin experts succeeded: "Child abuse: Kill the bastards. Go get 'em! Why did you wait so long?"

The next day after the fire, Dick DeGuerin and I had a chance to respond in behalf of our now forever silenced clients. What "intelligence" of recent child abuse existed? I challenged the FBI and Attorney General to release the so-called intelligence - after all, we had seen the adults and children only days before, and had talked to most of the survivors: The children were not being beaten, and they were well-fed, well-clothed, and clean. The next day, the FBI fessed up: "We did not tell the Attorney General there was evidence of abuse during the siege; we passed on the 1992 reports from last year." Who in the public heard that retraction? Very few. The damage to truth-finding was done: Child abusers deserve to die, even if the horrible fire that killed them consumed the children, too. "By God, we destroyed the children to save them. They're better off now." I point out to you: at 6:00 AM on April 19th the kids were alive and physically well, although I'm sure they were emotionally scarred by their experience of being sprayed by thousands of rounds of ATF ammunition in February and weeks of ear-splitting nonsense blared night and day by the FBI, but they were alive. By 1:00 PM they had been burned alive.

There is a cruel streak in the country. Some of the public - and some of our leaders - seem to be gleeful over the incinerated Branch Davidians. The cruelty that has been reported to me numbs my faith in humanity. I have gotten many, many phone calls and letters since April 19, and over 91% support our efforts to get to the truth. But I have also learned that some people watching television on April 19 as the fire killed the children were actually cheering. Others have commented, 'I support the FBI, why didn't they do this sooner?" "David Koresh was a nut, and federal agents had been killed. They all deserved to die." Unbelievable. The final tragic mockery of justice occurred when a high official in our government with responsibility for the attack decision received the support of her superior and co-workers by a public announcement of "That-a-girl!" Eighty-six incinerated human beings, and we Americans react by saying, "That-a-girl" or "That-a-boy"? Unbelievable.

The terrible loss of life outside of Waco was bad enough, but for the country, there may be an even worse loss. We saw our respected governmental agencies flounder, then try to cover their tracks. We should all be concerned about the following developments.

The intentional use of "misinformation" to mold public opinion

Within a short period, high public officials, public relations officers and press secretaries were misleading the public. Their initial claims are followed by their later admissions, retraction, or obvious errors.

The ATF did not alert the press before the February 28th attack. The media was called several days in advance by an ATF spokeswoman.

The ATF did not lose the element of surprise. The undercover operative (known to be an ATF agent by the Branch Davidians) reported to his supervisors that a tip had been received an hour or more before the attack.
Two "cultists" confessed to starting the fire on April 19th. Withdrawn as inaccurate, because no such confession occurred.
The April 19th operation was a "non-aggressive" action. Once the nation saw tanks crashing through walls and ripping out windows, even the FBI began to call it an "assault."
The Justice Department could not wait another day because the children were being beaten during the siege. Two days later the FBI reported the information given to the Attorney General was the old information from 1992, not current intelligence.
It was a planned mass suicide. Every survivor vehemently denied any plan for a mass suicide. Nine people fled the flames - they didn't commit suicide, yet remain totally committed to their leader. The "leaders" were found in one room, and the 80 or so others spread throughout the building. Not exactly a mass suicide scenario.
They murdered people who wanted to escape by shooting them. The survivors reported that no such thing occurred. As of this date, most autopsies are complete, and only some reveal gunshot wounds. Remember, six people were killed by ATF gunshots on February 28th. Dick DeGuerin and I saw several on April 1 and April 4 (we did not take a count) who still had ATF bullets in them, but had recovered. The ones found with gunshot wounds included David Koresh - the one who was alleged to be killing the others! No one will know for sure, but it probably was a case of people being trapped unable to escape a fiery hell, and some chose to end the suffering by taking their own lives - hardly a "mass suicide" or "murdering those who wanted to escape."
David Koresh was not working on his Seven Seals project - it was a sham. Three survivors who had been kept apart before speaking to Dick DeGuerin and me, reported personally working on the preparation of the First Seal, and that it had been completed in typed form Sunday night, while David Koresh was dictating the Second Seal to women who had worked before as secretaries.
The Government had gone in on both February 28th and April 19th because of child abuse occurring. Perhaps no one will ever know the answer for sure, but the public was not told that the 1992 allegations were investigated by the Child Protective Services and no evidence of abuse was found. The local sheriff agreed. Further, the children who came out after the ATF attack were reported to be healthy and not victims of child abuse.

Failure to have an independent review, AKA "cover your ass"

In the first few hours after the April 19 holocaust, sensing public outrage, high government officials promised an independent, impartial, outside investigation. That sounded reassuring, causing most of us to think, "Well, let's wait to see what the facts are." But - almost immediately (within a day or two) the spectre of cover-up began to surface. Prior to April 19, by agreement of all concerned - ATF, FBI, state officials, and the lawyers for the Branch Davidian leaders - it had been decided that no federal agents would be involved in the "crime scene" investigation once everyone was safely out and

the scene secured. Instead, an agency with no axe to grind was to conduct the investigation - the Texas Rangers - an elite component of the Texas Department of Public Safety. Yet, on the very first controversial issue - how the fire was started - the feared "spin" was set in place. Instead of bringing in a totally independent team of experts from any number of unbiased fire departments from the nation's major cities, the man chosen to report to the Attorney General and head the group was only three years out of the Houston ATF office which had major planning and execution responsibility for the failed raid on Mt. Carmel on February 28, 1993. Instead of having the report viewed as credible, it was tainted before it was released, its results "a foregone conclusion" given the close ties its leader had to one of the federal agencies under the spotlight. Those ties include the following indicia of "neutrality": his work space (office, telephone, mail) from 1982-1990 was in the Houston ATF office, as evidenced by his business card from that period; during that period he identified himself to witnesses verbally and with his card as an ATF Special Agent arson investigator; he went to the funeral of the Houston ATF agent slain in the February 28th raid, and he was then and is currently married to a secretary working in the Houston ATF office. The fire was on a Monday. The Saturday of that week he had asked Dick DeGuerin to meet on Monday to help in the investigation, since Dick DeGuerin and I were the only non-Branch Davidians who had been inside and were able to describe the possible flammable conditions. His report was to be released Wednesday. Dick DeGuerin and I were to leave Sunday night at 6:30 to go to Waco. Over the weekend, it was confirmed that this "independent" investigator had been a de facto ATF agent. When Monday came, he was told that since he had such close ties to the ATF that unless the Texas Rangers asked us to participate, Dick DeGuerin and I would not lend our credibility to the anticipated report. In response, he called an unscheduled press conference for that same day, and announced that the fire was started by the "cultists." Surprise! Surprise! Of course, the reasons for the fire he described coincide with what the survivors told Dick DeGuerin and me, as well as with our recollection of the inside and our review of the videotapes of April 19. With the site now bulldozed over, the true origin of the fire will never be known for sure.

Failure to complete an accountability review

High officials have publicly stated "every aspect, from top to bottom," will be reviewed. That is needed, of course. But it is not enough. Those bureaucrats who made the horrible errors in judgment must be held accountable - just saying "I'm sorry, I did the best I could" is not good enough. Because no matter how you cut it, no matter who did what when - on February 28, 1993, over 130 people were living in an isolated religious community not harming anyone. Even if the claim is true that some possessed destructive devices, that is a 10 year maximum penalty offense. By April 19, 1993, close to 100 people - including law enforcement agents and babies - were dead. For what? Those responsible for the crucial decisions at each juncture should be removed from positions where their deficient judgment could result in a similar disaster in the future.

The failure of Congress to conduct complete hearings

As of this writing, only the House Judiciary Committee has even convened a session, but it could hardly be called an "investigation." The only persons called as witnesses were the ones whose conduct should be under scrutiny. Only one side was heard. Except for a very few notable exceptions, the committee members almost injured each other clamoring to see who could praise the witnesses most and first. Where are the tough questions? Where are the only witnesses who were inside Mt Carmel, who saw the results of the ATF raid and of the FBI negotiation tactics, and who have interviewed the survivors of the fire as well as many who died in the fire? Why haven't Dick DeGuerin and myself been called to present the view of witnesses who do not work for the agencies under investigation, who no longer have clients in existing court cases, and who have personal knowledge not possessed by any other living human beings?

The underlings will take the fall

ATF: The young men and women who participated in the February 28th attack were executing orders. They are not trained in the "law of war," and could not be expected to recognize the illegality of the orders to open fire on pregnant women and unarmed children. Their loss should be mourned. Their leaders should be held accountable. They wanted to look and act like military personnel - so let's take the military analogy one step further. Had this been an operation by a military unit which had failed so miserably, the commander on the scene would have been immediately relieved of command, and would be under investigation for a possible court-martial for dereliction of duty. His superior officer would be walking very gingerly, as would that officer's superior. The careers of each of those in the chain of command would and should be over. FBI: I admire the courage of the Special Agents on the ground. I am convinced from my meetings with these men that they truly wanted a peaceful resolution. Evidence: they authorized the extraordinary step of permitting Dick DeGuerin and me to visit face-to-face with our clients. The theory was to build trust as only a criminal defense lawyer can do with one suspected of crime, and then to assure those inside that they would not be executed the minute they set foot outside the Center. We were independent of the FBI. On opposite sides. But we shared a temporary mutual goal: a peaceful resolution of the stand-off, and moving the confrontation to the courthouse. Frankly, I thought there was a mutual respect, even if we disagreed on certain matters (like playing the ear-splitting noises so the children could not sleep). Make no mistake, I do not think the on-scene FBI leaders intended to kill those inside. After all, their mission was clear: perform damage control for the mess created by the ATF and reach a peaceful resolution. The April 19 result was total failure for the FBI, any way you cut it. It is the blackest mark in the history of this proud organization. Cynics might say that the obvious pain in Bob Ricks' voice at the post-fire briefing was caused by the realization that his career progression was over. I don't think so. Unless I just totally misjudged him, I think the pain was real and was caused by the realization that innocent men, women, and children were among the incinerated. As a professional

law enforcement agent, that troubled him. Cops don't often fret over harm to the guilty, but good cops want to protect the innocent - certainly from death without due process, especially by burning. But I'm afraid the fault for the totally incompetent decision made to destroy the building itself (as opposed to the decision to use gas) which led to the fire, no matter who started it, will be laid at the feet of the men on the ground in Waco. That is wrong. The desk-bound Washington bureaucrats made that decision, but I predict none of their heads will fall. The public ought not accept such an outcome.

The Branch Davidians had mothers, fathers, grandparents, brothers, and sisters. The demonization of the entire religious group by our government officials is tragic, and caused unnecessary and deep pain to the families. I have spoken in person and by telephone to these grieving family members, and it is heart-wrenching. They loved their sons, daughters, siblings. The Branch Davidians included decent, loving people who were committed to a religious faith that in this country they had every right to practice. The Steve and Judy Schneider I met and spoke to at length were decent, intelligent, articulate people in their early forties, who were well groomed, polite, and pleasant hosts. It was remarkable how composed they were, given that there were military tanks and armored vehicles rolling up to their house daily, they had no electricity, their two year old daughter was kept awake by the FBI loud speakers at all hours, and the lack of trust in the FBI they had carried over from the fact that an unarmed Judy had been shot by the ATF in the hand (as she held her hand next to her face pulling aside a curtain to see what the commotion was outside her window).

The truly tragic ending is made worse because they were coming out peacefully. Steve Schneider told me at every contact we had that the entire group wanted to come out. They wanted the truth about February 28th to be told. They were not going to surrender until they felt their God indicated his approval, and then only if the FBI would honor its commitment to have the procedure include Dick DeGuerin and myself, for their protection. They were suspicious of "the beast" [the established government], and, as it turned out, for good reason But on April 1, 1993, they told Dick DeGuerin and me that they agreed with our advice to come out that day, but they needed to satisfy both the secular law and the scriptural law. They told us they could not come out until after Passover (a high holy week to them), and then when they received word that their waiting period was over. On April 4, 1993, we discussed legal documents including setting up a trust for David Koresh's children, protecting the title to Mt. Carmel so no one could claim it was abandoned when everyone came out, and legal fee agreements for Dick DeGuerin and myself. These are not matters one discusses if set on suicide. We were so sure they were coming out that we left drafts of our fee letters, telling them to make corrections and we would retype them when they came out. When Dick DeGuerin and I talked to them on the day after Passover - April 14, 1993 - they were ecstatic: They had received the clearance they had been waiting for, and they were coming out when the secrets of the Seven Seals were reduced to written explanation. This news was put in a letter, sent out that afternoon. A copy was given to the FBI; the contents released by permission to the press. At a day or two per Seal, it was going to be over in about two weeks or less. The survivors told us that David Koresh told all inside to prepare to go

to court, that they were coming out when the Seals were decoded. April 14th was a Wednesday. The FBI waited Thursday, Friday, and Sunday (everyone knew no work could be done on Saturday, their Sabbath): After three work days, the First Seal was in final form, and the Second was under preparation. After the Attorney General had made the decision on Saturday to attack at dawn on Monday, on Sunday night typewriter ribbons were delivered by the FBI to the Center. Everyone was excited, knowing that the ribbons meant they would soon be leaving Mt. Carmel.

These religious people woke up Monday morning to armored vehicles smashing into their home, and gas that caused coughing, burning of the eyes and nose, and vomiting, being injected into their bedrooms. So much for trusting the government. Until the questions asked earlier are answered, Americans are going to have a hard time trusting their government.

Jack B. Zimmermann is a board certified criminal law trial lawyer from Houston. A decorated Marine Vietnam combat artillery officer, he is now a Colonel assigned as a Reserve general court-martial judge. Mr. Zimmermann represented Steven Schneider, David Koresh's second-in-command.

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July 1995

Update to The Legacy of Waco

Any thorough criminal defense lawyer tries to corroborate with independent evidence the facts that a client relays. We did so in this case as follows:

1) Dick DeGuerin and I had been told on April 1, 1993, that Wayne Martin had called 911 at the outbreak of the shooting. When the 911 tapes were released, that was in fact exactly what had happened.

2) We had been told by many people inside Mt. Carmel that the first shots had come "from outside from the left," aimed at where David Koresh had been standing after he had opened the door. When we checked that double door, made of metal, the spray pattern on the right side as you face the doors from the outside was consistent with what we were told. When interviewed at length by the Texas Rangers in July 1993, both Dick DeGuerin and I described that door, and I strongly suggested that the Rangers inspect that evidence. I was told it was intact, and they had it. However, at trial, the crucial right door, made of metal, was not available. Where was it? It could not have burned. Its disappearance raises serious suspicions about the integrity of the post-fire investigation and the prosecution of the survivors.

3) We had been told by many people inside Mt. Carmel that shots had been fired from a helicopter. We were shown holes in the ceiling of the fourth floor bedroom of David Koresh, which appeared to us to be exit holes in the ceiling, meaning the rounds entered the bedroom from the outside. That evidence was burned. However, on February 28, 1993, within minutes of the occurrence, on the same 911 tape where Wayne Martin is frantically seeking help from the Sheriff's Department, Steve Schneider's voice is heard in the background saying, "Another chopper with more people and guns going off, here they come. They're firing!" He didn't know Wayne Martin was on the telephone talking to 911, and he was being recorded.

4) The ATF had announced that there would be no question about who fired first because the initial raid had been videotaped. On April 6, 1993, I filed a motion to preserve that tape and all other audio or video tapes. That was granted. However, later (after the Branch Davidians asserted the ATF had fired first) it was announced that the crucial videotape was "blank."

5) On April 14, 1993, we had been told that the whole group would be out in less than two weeks. We were informed that the First Seal was completed, and David Koresh was working on the second one. We told the FBI that. Later, we learned the FBI did not believe Koresh at all. The FBI claimed the Branch Davidians had lied to their lawyers. When interviewing Ruth Riddle two days after the fire, she told us she had typed the First Seal, and the computer disc was in her pocket when she escaped the fire. We contacted the Texas Rangers, who recovered the disc. When it was printed, there was in fact a First Seal. They had not lied to us.

6) We announced that the Branch Davidians had agreed to a surrender plan, worked out with the FBI. Recently released audio tapes of the negotiations indicate that only days before the FBI attack, David Koresh went over that plan with the FBI negotiator, after we had told the FBI they were coming out.

In the Legacy of Waco, I revealed the background of Paul Gray, the "independent" arson investigator reporting to the Attorney General. Attached to this Update is a copy of the business card Paul Gray handed to witnesses in the 1980's clearly identifying himself as an ATF Special Agent. I also predicted that the underlings would be blamed, and no senior leaders would be disciplined. That predication was true - senior executives were permitted to leave their posts without discipline, either by resignation or full benefits retirement. Some were promoted. Others remained in office and are still at the Cabinet level. Two leaders of the ATF raid itself were fired for their actions, including lying to the investigators, their superiors, and the public, but they have been reinstated with back pay. No FBI or Justice Department officials have been disciplined at all. No significant discipline - administrative or criminal - has been imposed. I have represented clients over the years whose transgressions have paled in comparison to the misdeeds of these senior people in charge.

I also predicted no thorough investigation would occur. The Treasury Department Report made an effort, but its teachings have been ignored. The Justice Department conducted what cannot be described as anything other than a whitewash.

On July 1, 1994, I retired from the Marine Corps after 14 years of active duty and 16 years of reserve duty. My wife and our two grown children are Americans dedicated to this country and the preservation of our Constitution. My wife also served all those years I was in uniform, sharing the sacrifices. Our daughter and son are active duty Marine Officers today. We put our actions where our words are when it comes to serving our country. We take seriously our oath to defend the Constitution of the United States of America against all enemies, foreign and domestic.

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Mr. ZELIFF. I just want to tell everybody what's going on. We have to go to a briefing for hopefully less than an hour, and we are going to resume with the next panel as soon as we come back. It's unavoidable. There is nothing we can do about it. We apologize about that.

We are looking at skipping the third panel tonight, so we are not going to stay here until 4 o'clock in the morning, and we will talk through how that is going to go. But we will be back and resume with the second panel, and we should be back here within less than an hour. I appreciate your patience. I'm sorry for the delay.

[Recess.]

The subcommittees on the Waco affair will now come to order.

All the members of the panel please step forward and be seated.

I will introduce Dr. Phillip Arnold, religious scholar from the Rice University who holds a Ph.D. in religious studies with a focus on apocalyptism and Jewish and Christian history; Prof. James Tabor, professor of religious studies at the University of North Carolina who recently authored, "Why Waco? Cults and the Battle for Religious Freedom in America;" Maurice Cook is a captain in the Texas Rangers; and David Byrnes is a captain in the Texas Rangers.

Everybody here and present?

The other members will be sworn in.

Mr. McClure——

[Witnesses sworn.]

Mr. ZELIFF. Thank you.

Let the record reflect that the answers were in the affirmative.

The Chair will now recognize John Mica for 5 minutes.

Mr. MICA. Thank you, Mr. Chairman.

I would like to start, if I may, with the two witnesses that are Texas Rangers. I guess actually we have three here, the senior Texas Ranger Captain Cook, Captain Byrnes, Mr. Foster.

How did you get here gentlemen?

STATEMENT OF CAPT. MAURICE COOK, SENIOR TEXAS RANGER

Mr. COOK. Well, we flew American Airlines. I am not being——

Mr. MICA. Who paid for the tickets?

Mr. COOK. The State of Texas.

We asked Congress to pay for it and Congress said we need to fly on our own.

Mr. MICA. How long have you been here?

You have been here, I understand, 4 days prior to the hearing?

Mr. COOK. No, sir. We arrived here Sunday night. We got in about 9:30, and I think it was 11:30 before we found a hotel.

Mr. MICA. That is for all three of you?

Mr. COOK. Foster is not here. He is a retired Texas Ranger. We don't know where he is. He is not under our command.

Mr. MICA. During the interim, have you spent time with Ron Noble or Mr. Black or other Treasury officials or Justice officials discussing the hearings or what took place at Waco?

Mr. COOK. Yes, sir.

Mr. MICA. Did you request those meetings?

Mr. COOK. I think Captain Byrnes maybe can address that better than I can.

Mr. MICA. Who requested the meetings?

STATEMENT OF CAPT. DAVID BYRNES, TEXAS RANGER

Mr. BYRNES. Mr. Mica, if I could, let me back up to last week, possibly.

Is this what you are talking about when we were up last week?

Mr. MICA. I understand you were up last week, too, and had meetings, so you have been meeting on several occasions with Treasury officials, other Federal officials to discuss your testimony and what took place at Waco?

Mr. BYRNES. Yes, to discuss the facts of Waco. We met with both the Republican staff people and the Democratic staff people and——

Mr. MICA. Did you meet with the majority staff people?

Mr. BYRNES. Yes, sir, twice.

Mr. MICA. Did you have lunches or any meals with Ron Noble?

Mr. BYRNES. Yes, sir.

Mr. MICA. So you basically have been wined and dined and met with the Treasury officials prior to your testimony and participation here today?

Mr. BYRNES. We ate with Mr. Noble a couple of times, yes, sir.

Mr. COOK. I might add that we spent more time probably with the congressional people than we did with Mr. Noble.

Mr. MICA. But you did spend time and discuss your testimony. You didn't feel you were under any pressure though, did you?

Mr. COOK. No, sir.

Mr. BYRNES. Absolutely not.

Mr. MICA. Are any of you familiar with the missing door that was testified about just before that was supposed to be in the possession, I guess, of the Texas Rangers? Does anybody know where the missing front door is?

Mr. BYRNES. I think I know where it is or where it went.

Mr. MICA. Where did it go?

Mr. BYRNES. I believe what happened to that door, if you recall the videotape when they were inserting the gas, when the tank made the insertion there at the front doors, when they pulled out there was a lot of debris that came with that. The left door was found outside the burned area. The right door I believe was pushed inside there and burned. When we got into the crime scene there was quite of a bit of sheet metal, metal cabinets and metal frames, like dining chairs and this type thing. I believe that when we had to clear that debris to start the crime scene that this stuff appeared to have no evidentiary value.

Mr. MICA. But they are not sure——

Mr. BYRNES. No. The door was not recognized, IC believe, for what it was.

Mr. MICA. Captain Cook, you don't know where the door is and the other gentleman doesn't know where the door is, either, do you?

Mr. COOK. No, sir, I do not.

Mr. MICA. Dr. Arnold and Dr. Tabor, are you familiar with this report the recommendations of the experts for improvements in Federal law enforcement after Waco?

STATEMENTS OF JAMES D. TABOR, PH.D., ASSOCIATE PROFESSOR OF RELIGIOUS STUDIES, UNIVERSITY OF NORTH CAROLINA AT CHARLOTTE, AND J. PHILLIP ARNOLD, PH.D., REUNION INSTITUTE, HOUSTON, TX

Dr. TABOR. Yes.

Dr. ARNOLD. Yes, I have seen that.

Mr. MICA. Didn't the administration retain a number of people like the head of the Harvard School of——

Dr. TABOR. Larry Sullivan, Nancy Ammerman, yes, sir.

Mr. MICA. Several individuals. It is kind of interesting that they asked questions like, is the Federal assault on this religious community near Waco, TX, together with its ensuing standoff and fiery end emblematic of the trivialization of religion in official America—though the Branch Davidians may not in everyone's view typify religious life in many American communities, the response of public officials and law enforcement agencies may in fact reflect marginal value assigned to religion as a public matter and the reduction of public religious convictions and actions, et cetera. This is their response.

They also said that they felt that we needed to retain—a consultant that is friendly is not sufficient in the future in instances because of, again, their recommendations that there wasn't proper knowledge about this group, this religious group.

Could you describe this group and the recommendations and their beliefs as it relates to what is in this report?

Dr. TABOR. Which one would you like?

Mr. MICA. Either one—Dr. Arnold, you can take turns.

Dr. ARNOLD. When you say this group——

Mr. MICA. The Branch Davidians.

Dr. ARNOLD. And what is your specific question?

Mr. MICA. These recommendations say that we didn't understand their values. We didn't know how to deal with them. It was sort of a bizarre cult or religious group.

Dr. ARNOLD. After the tragedy of April 19, 1993, throughout the next year, many scholars began to communicate one with the other, scholars who are experts in religion, and we felt like it would be very important to form a task force, which we did, called the Religion-Crisis Task Force which would be available to help law enforcement, the media, Government gain accurate information about religious groups if ever such a situation would occur again.

Mr. MICA. Why do you believe that it was so important that the religious aspect of this group be understood?

Dr. ARNOLD. Dr. Ammerman and Dr. Sullivan and others in that particular report wrote: Without a correct understanding of the Branch Davidians religious faith, law enforcement was operating in a vacuum. They were not able to perceive the meaning of the religious language the Branch Davidians were using. They were not able to understand the actions that the Branch Davidians took. They were not able to know which precise course of action would be of more value than another course of action. And they were un-

able to know which particular steps could precipitate disaster. Had they had knowledge of the religious faith of the Branch Davidians, this story could have ended in a much better and happier way.

So I think Dr. Ammerman and Dr. Sullivan and others of us want to communicate to the American people, to law enforcement, to our country, to our Government that it is crucial to understand the world view, the ideological world view of a religious group if we are going to deal with them in the act of law enforcement. Not that they are in any way exempt from existing laws. No. They are responsible to those laws like all of us. But if we are going to deal with someone from a different culture or someone who has a different religious language or even a different language linguistically speaking, you want a good translator present to help you understand the culture of those people you are dealing with.

Mr. ZELIFF. The gentleman's time is expired.

Dr. TABOR. Could I make a 30-second response since you asked both of us?

Mr. ZELIFF. OK.

Dr. TABOR. I would like to say that the FBI reports they had a facts meltdown, so I think both Arnold and I come with a degree of sympathy. Where do you turn? You had everybody from the nuts to the bolts calling in and saying I can solve it.

I know about the Book of Revelation. There is also a procedural thing here, and it has to do with setting up something that we can explore later. But I think we want to register that sympathy. They are trained in hostage barricade rescue not the Book of Revelation, so who do you call. They had a tough time trying to figure out who to listen to.

Mr. ZELIFF. Thank you.

The gentleman from Michigan, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Thank you very much, Mr. Chairman.

Gentlemen, and Mr. Cook in particular, welcome to the House of Representatives and these two committees.

Mr. COOK. Thank you.

Mr. CONYERS. May I ask you, sir, in your opinion, is it a good idea to let outside people talk to a suspect or person that you are negotiating with under the circumstances of the Branch Dividians standoff?

Mr. COOK. I think in all our training that it would not be a good idea according to our training. However, when all other fails, you resort to whatever means will resolve the issue. In hostage negotiation, I think you can get too formalized. I think you've got to do what works.

Mr. CONYERS. You have had a chance to interview special agents Sarabyn and Chojnacki. Based on those interviews you have learned and how you viewed their credibility and whether you think that they knew the raid had been compromised?

Mr. COOK. Let me pass that question to Captain Byrnes. He was the site commander, the overseeing commander.

Mr. CONYERS. You were closer to that, Mr. Byrnes?

Mr. BYRNES. Yes, Congressman. I was the task force commander down there.

To answer your question, in my view, from the overwhelming evidence that we uncovered in interviewing the agents, some 60 or 61

of those agents, and in what our agents, their perception was and what was said when they interviewed Mr. Sarabyn and Mr. Chojnacki, I don't believe they are credible in this instance, and I do believe that they knew that the raid was compromised.

Mr. CONYERS. You know that this is a large issue that has been going back and forth over the last several days?

Mr. BYRNES. Yes, sir. That has been an issue almost from day one down there. It caused us a lot of problems.

Mr. CONYERS. It has indeed.

Mr. McClure, what is your view with respect to allowing outside people to intervene and talk with a suspect that is being negotiated with, that you are negotiating with?

Does that have any basis in good law enforcement work?

STATEMENT OF FRANK McCLURE, DEPUTY SHERIFF, DOUGLAS COUNTY, GA

Mr. MCCLURE. In all our training we try to use that only as a very last resort. In our basic negotiations 101, when we teach and train other law enforcement personnel, we advise against using what we call third-party negotiators.

Mr. CONYERS. Especially those individuals who come out of nowhere and you don't know that much about them. Weren't there people trying to intervene on a voluntary basis?

Mr. MCCLURE. It is my understanding that negotiators out there got calls from literally all over the world, offers for help. It has been my experience that unless you are trained in crisis negotiations—and like you said, Mr. Conyers, if you hadn't been there and don't know what has taken place, how can you come in and legitimately negotiate with a person on the inside.

Mr. CONYERS. Thank you.

In your opinion, is there anything different that the FBI could have done to guarantee a different outcome in the Waco standoff?

Mr. MCCLURE. I think that you had some of the best negotiators in the country that were out there. I think some mistakes were made that in hindsight that if they had to do over they may have done a little bit differently.

Mr. CONYERS. No question about that.

Mr. MCCLURE. But I think that all the efforts were, and the ultimate outcome, in my humble opinion, was up to Mr. David Koresh. He could have came out at any time. They gave him the opportunity, they presented the vehicle for him and the followers to come out at any time that they wanted to, and they chose not to.

Mr. CONYERS. It was more or less inevitable from the things I have been hearing. People have different views, different feelings and different opinions, on this.

The defense lawyers sure as heck come here with a point of view that doesn't have to be elaborated on. We hear a lot of things from one end of the spectrum to the other, but in the end we have to consider all of the conflicting testimony and try to find out what kind of person Mr. Koresh was. There has been a great attempted rehabilitation here today that is most amazing feat I have witnessed in quite awhile.

I have one last question, Mr. McClure. The dynamics in the negotiation process between the tactical team and the negotiators, do

you have any feelings about how that went down or what kinds of pressures were at play?

Mr. McCLURE. On any operation, any hostage barricade situation you are going to have communication and you are going to have differences between negotiators and tactical commanders. That is healthy. It is ultimately left up to the onscene commander to make the ultimate decision based on recommendations of your negotiation team commander and tactical commander. They present all options to the onscene commander and he has to make the ultimate decision. Naturally, tactical people think in tactical terms. Negotiators think in negotiation terms. And sometimes they are not going to always mesh. I am a trained negotiator. Those are the terms that I think in. I would like to think that if some things had, recommendations by some of the negotiators had taken place, that maybe some things would have been different. I don't know.

Mr. CONYERS. You did an excellent job.

Thank you very much for coming here this evening.

Thank you, Mr. Chairman.

Mr. ZELIFF. Thank you, Mr. Conyers.

The Chair recognizes Mr. Chabot from Ohio.

Mr. CHABOT. Thank you, Mr. Chairman. I can't let the gentleman from Michigan's comment about the attempted rehabilitation of this afternoon go unchallenged because I heard no one trying to rehabilitate, particularly if the gentleman is referring to Mr. Koresh. I heard an attempt here at least on this side of the aisle and I think on the other side as well, to get all the facts out, to get opinions about what happened in this event and to learn from this terrible tragedy, both a tragedy that happened on February 28 when four brave law enforcement officers lost their lives and then on April 19, when 20-some innocent children perished and other women who I believe were also killed within that facility. I have no sympathy for Koresh or for any of the other gunmen in that facility, but I have tremendous sympathy for the innocent children that were in that facility. There was no attempt to rehabilitate anybody today.

Getting on with my questions, to the Texas Rangers, gentlemen, could you briefly describe what the Texas Rangers involvement was in either of the two incidents, either the February 28 or the April 19 incidents?

Mr. COOK. Let me just go ahead, and I am glad somebody asked that question, because the Texas Rangers—first of all, let me just say that there is only 103 Texas Rangers in Texas. We have 254 counties and we are part of the Texas Department of Public Safety, which is about 3,000 commissioned people strong. All have 8 years law enforcement or more so we have seasoned veteran police officers as Texas Rangers.

Our role was, the U.S. Attorneys Office and ATF had called and asked us to handle the murder investigation of the four ATF people that were killed. That was basically our role. We did the crime scene, we gathered the evidence and we worked a criminal investigation dealing with murder.

Mr. CHABOT. You weren't responsible as the ATF was for the first raid or as the FBI was for the second raid?

Mr. COOK. No, sir, we were not.

Mr. CHABOT. Did you have occasion to have dealings with the FBI gentleman, I believe that was one of the commanders down there, Mr. Jamar?

Mr. BYRNES. Yes, sir, I did.

Mr. CHABOT. We had some information that one of you gentlemen or some Texas Rangers felt that he was out of control. Could you comment on that?

Mr. BYRNES. Yes. I had quite a few disagreements with Jamar. First of all, to be fair, as Mr. McClure said, there were tactical considerations there which were the safety concerns of the HRT and the people inside the compound. We had competing concerns which were for that crime scene which we had to try to work at some point in time once they had terminated that standoff.

With those competing interests, if you will, it was a matter of tactical or the crime scene, those were always resolved in favor of tactical. And I have no argument with that. I think the safety of all those people was utmost.

My bit problem I had, that I think all of us had, including the U.S. attorney down there, was that there was no communication. It got to the point we couldn't even talk to them on the phone. They were destroying the outside of the compound, especially moving the vehicles, which we thought were critical evidence for trajectory.

We were hopeful we could put people shooting out of the windows and from that window, maybe, do some trajectory things with ballistics and then charge someone specifically with murdering some of those four agents. We talked about that. We were told that we would be able to urge our concerns before that happened. That was not done. We found out about it on CNN, as a matter of fact.

It got so bad that finally Mr. Johnston wrote the Attorney General a letter and detailing our complaints and concerns which resulted in main Justice and the operational arm of the FBI becoming involved in that.

They came down, I had a meeting first with Mr. Mark Richards in Justice and I believe Mr. Potts from the FBI who was at I think about the No. 3 level. I voiced my concerns to them and my criticisms.

About a week later, we had another meeting. They came back down and we got pretty much on an even footing. In the meantime I had met with Jeff Jamar and Byron Sage and also voiced these concerns to them in person and told them that I was very concerned about the crime scene destruction, the—I was upset because they let two defense attorneys in on the crime scene. That is the first time in any criminal investigation I believe that has ever been done.

Mr. CHABOT. Let me stop you there if I can because I am getting short on time. There is a question I wanted to get from the two doctors here and also the Texas Rangers. I know many Members on both sides of the aisle have tremendous—were very disturbed about the fact that this CS gas was used, particularly when there were innocent children in that facility.

I would like to ask the doctors, what do you think about that particular decision and, well, that is the question basically? What

do you think about the decision to use gas when there were children in that facility; tear gas?

Mr. ARNOLD. I don't know if we all want to hear my answer to that particular question because when the story really becomes known to you as to what happened to the people inside when the CS gas came in and how it eventually leads to tanks coming in the front to insert more CS gas, when you begin to actually understand the religious dynamics that went on within the community, and that is what I want to talk about later as we proceed through tonight, you will begin to see a very, very sad, sad, sad story, because as that CS gas was delivered, you can listen to the surveillance tapes made by the bugs put there by law enforcement. And those bugs will tell you many things. We have already heard some of the more disturbing things. But there are also places in the bugs where you can hear or read the Branch Davidians knowing the gas was coming in, you heard them say let's pray. You hear them reading psalms, something like the 23d Psalm, "Lo though I walk through the Valley of the Shadow of Death I will fear no evil," those kinds of psalms. They gathered together to pray, they began to recite these Biblical passages.

What were they doing? They were calling upon their God to protect them from this CS gas. That is a sad story and I don't want to go on with it in too much melodramatic tones, because it can be very depressing as you think about what happened especially later as lives were lost and prayers unanswered and people die. It was not a good idea.

Dr. TABOR. I will explain later, but in a sentence, it delivered to David Koresh the apocalyptic situation that he had predicted and expected for 10 years, and it came on the 19th.

Mr. CHABOT. The Texas Rangers?

Mr. BYRNES. Well, I would believe that it had to be very devastating to those people in there. Let me say that I was advised on the 18th, of what that operation was going to be on the afternoon of the 18th. I did not have at that time a problem with it per se. I was not asked, I was merely advised it was going to go forward.

The gas is something that is used in barricaded subject situations, and from that context I didn't see a problem with it. I think that, obviously, the substance that was used on especially small children was quite unpleasant to think about. It is unpleasant for me to think about and I think about it a lot, and I had nothing to do with it.

Mr. COOK. It is difficult to second-guess without having all the tactical information. Gas is one of the less lethal ways of extracting barricaded individuals. It is less than firearms, it is less than deadly force, even though some will argue that tear gas or CS gas could be deadly on some subjects. The intent was to extract the people from the compound, I am sure. Even though we were not part of that program, I am sure the intent was to extract as many people from that without injury; discomfort, maybe, but without injury.

Mr. ZELIFF. The gentleman's time has expired.

Mr. Schumer for 5 minutes.

Mr. SCHUMER. Thank you, Mr. Chairman.

It is nice to see this panel here because the previous panel was the most unbalanced we have had so far and to have two defense lawyers for 6½ hours with nobody else on the panel, clearly they were doing their job and I don't hold that against them, but that is not a semblance of fairness or lack of bias. When I heard each of them refuse to really believe that Kiri Jewell was suffering the way she did, it really raised my eyebrows about the whole worth of the entire testimony.

I want to go over a few questions with a far less biased source and I don't know what your answers will be, but certainly I will have more faith in them than the answers I had from defense lawyers.

The first is, as a well-respected law enforcement agency, and you conducted an extensive investigation in Waco, I want to ask these questions. Earlier today we heard these defense lawyers, who were not on the scene at all, make the argument that the ATF fired first. What is your judgment as to who fired first? That is for the Texas Rangers.

Mr. BYRNES. I believe that the evidence was to me overwhelming in the trial that the Davidians fired first. The cameraman and the reporter, although very reluctantly, finally, I believe, conceded that. He had broadcast that several times. He was more or less a hostile witness. But in my mind there is no doubt who fired first.

Mr. SCHUMER. Again, you have no doubt at all——

Mr. Byrnes. No, sir, no doubt.

Mr. SCHUMER. So the defense lawyers' testimony there is at clear odds with yours?

Mr. BYRNES. I certainly have a different opinion than they do; yes, sir.

Mr. SCHUMER. Second, I want to ask you about the coverup. We have heard about coverups here, we have heard about mistakes made, but then a few people brought up the word "coverup." You were in charge of the investigation. From your knowledge—probably you are the people on the scene with the most extensive knowledge who are not part of the Federal Government, and, in fact, it is well known that you had some tension with some of the people in the Federal Government, not your fault, I might add, in my judgment, from what I have heard, do you have any notion that either ATF, FBI, or anyone else in the Federal Government tried to cover up the facts here?

Mr. BYRNES. I don't believe that there was, as far as the Federal Government, any kind of conspiracy. I think that certainly on the level of the raid commander and probably above them in ATF there was some——

Mr. SCHUMER. You mean Sarabyn and Chojnacki——

Mr. BYRNES. There was misinformation still being put out to this day about whether or not the raid was compromised.

Mr. SCHUMER. We heard about Justice coming in and telling the ATF not to look at it. That is a favorite theory of one of our colleagues. Not the fact that Sarabyn and Chojnacki might not have been telling the truth, but a coverup from higher ups saying don't do it.

Mr. BYRNES. I have seen no evidence.

Mr. SCHUMER. No evidence. Have you, Mr. Cook?

Mr. COOK. No. In fact that was the reason we were called in, not that ATF and FBI were not credible sources, but we were an independent credible source. That is the reason we were called in.

Mr. SCHUMER. You two folks, from the Texas Ranger point of view, feel no coverup? Is that absolutely correct?

Mr. COOK. That is correct.

First of all, we would not have stood for a coverup.

Mr. SCHUMER. I agree with you, knowing a little bit of the history of the Texas Rangers.

The next question is about the door. We have heard the right door is missing, although the left door is available, and I think you testified to an earlier question that you thought it was on fire and somebody may have walked off with it or it vanished because it was on fire. We do have the left door. First, isn't it true that there are bullet holes going in both directions on the left door? Is that correct?

Mr. COOK. That is correct.

Mr. SCHUMER. So you cannot determine from that door who fired first?

Mr. BYRNES. No, sir.

Mr. SCHUMER. Is there any reason to believe that the right door would be any different in terms of the way the bullet holes would be?

Mr. BYRNES. I don't think so.

Mr. SCHUMER. You haven't seen it. I am just asking for your advice as a law enforcement officer.

Mr. BYRNES. No, sir. I have seen the same pictures you have and the best picture I have seen, there appears to be bullet holes in it. I could not say which way they appear to be coming. I wouldn't think one door would be any different from the other, except we have got one and don't have the other.

Mr. SCHUMER. Thank you. For the first time this evening you have shed some objectivity on these hearings today.

I now have a question for Mr. Tabor. My question is this, Mr. Tabor. I have read some, not all of your book, and you were nice enough to give me another copy today. You seem to imply that the people of Waco, the people of America, all the rest of us are sort of intolerant because we weren't sensitive enough to the complexity of David Koresh's teaching.

On page 42 of your book you write that in 1986, Koresh announced his "nonlegal marriage" to 14-year-old Karen Doyle. Later the same year he secretly married a 12-year-old. You say on page 67 that Koresh arranged sham marriages among Davidians to conceal his behavior. And last week, of course, we heard Kiri Jewell's testimony, which I hope you don't have doubts about the way the defense lawyers did, but I am not even going to ask you that because I have a different question, given your expertise.

I just want to ask you, isn't there some line you cross over between tolerance of somebody whose religious practices are different and practices that in any society would be regarded as wrong, immoral, illegal. Both the weapons and the sexual charges of Mr. Koresh seem to me to cross that line.

As you know, Dr. Tabor, I am the author, along with Chris Cox of the Religious Freedom Restoration Act, which pushed back the

Government from imposing its will on religions that have somewhat different practices than the norm. But I would like both of you—David Koresh said that the Bible commanded him to do some of these very strange, abhorrent types of behavior.

It seems to me that at some point because some person says the Bible commanded him to do things, like marry 14-year-olds and sleep with 10-year-olds, and in fact have an aggregate of illegal weapons that we are crossing the line and they no longer deserve our tolerance; they deserve our condemnation and approbation.

I would like you and Dr. Arnold to just answer that.

Dr. TABOR. What the book attempts to do is as clearly as possible explain all the areas. I had no involvement in any of the charges dealing with sexual immorality, stockpiling of arms, whatever.

My only contribution, it was very minimal, was to try to interpret the apocalyptic system. However, in writing the book and trying to explain how a Harvard Law School graduate Wayne Martin or Steve Schneider with an M.A. in comparative religion, whom some have charged even gave his wife to Koresh, although that is denied in the negotiation tapes, but certainly other married men did—was to try to also—it is a comprehensive book, "Why Waco?" I am an academic so I try to tread the line between saying, isn't that horrible. I assume anyone who reads it would be able to judge that certain acts are horrible.

The question is, How did rational people become persuaded that these things were Biblical? If you read that chapter I think you will see it is very objectively presented, and I basically give "the best case," meaning the case David gave. It is an attempt to understand that aspect. It had nothing to do directly with the involvement at the end of April and what happened on the 19th, but is an important point, obviously.

Dr. ARNOLD. I think you are absolutely correct; there are limits. When a religious group and individuals in it break certain existing laws, then those laws have to be enforced. We have no quarrel with that. I certainly don't.

What I have a quarrel with is not factoring in the religious understanding of the group. You see, this was a religious ecosystem and when law enforcement broke into that ecosystem, it violated certain traditions and customs. It caused a certain chain reaction to take place.

My point isn't that law enforcement should not enforce the laws—they have to be enforced—but my point is that when law enforcement has to deal with these religious groups who have a different world view and different customs, they have to—the law enforcement has to factor into their actions an understanding of the religious group in order to avoid a catastrophe which takes the lives of law enforcement agents or innocent people within.

We don't want an event that is designed to accomplish a good boomerang on us and cause a gross catastrophe, as we have seen at Waco. The way to do that is to bring in religious translators that can translate the language of the group you are dealing with, and ATF did not do that.

Neither, I am afraid, did the FBI earnestly contact and consult religious experts. It is one thing to talk to them and to interview them, but we received no data, we received no information, no tran-

scripts of negotiation tapes. We were left in a void and could not therefore give the information that would have helped them.

I know Congressman Conyers made the point, and I agree with it. We didn't want to be on the telephone day in and day out with David Koresh. We are not qualified negotiators, as the Texas Rangers and Jamar and some of the other experts are. But we believe that we should have been given transcripts of those negotiations so that we could evaluate them and explain the religious language.

If we had done that, we believe that we could have helped resolve the crisis without further loss of life.

Mr. ZELIFF. Your time has expired.

We are going to recess for approximately 15 minutes for this vote. Try to get back as quickly as you can and we will resume questioning with Ms. Ileana Ros-Lehtinen.

[Recess.]

Mr. ZELIFF. The subcommittees will now come to order.

I do believe that was our last vote. We have these—every time these bells go off, we have to do these strange things about having to get up and run. We don't really control the institution, it controls us, but we apologize. I think we are here for the duration at this point, and we thank you for your patience.

Ileana Ros-Lehtinen from Florida, you have 5 minutes.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman. I would like to yield my time to Mr. Mica, also of Florida.

Mr. ZELIFF. Please proceed.

Mr. MICA. Thank you, Mr. Chairman, and thank you, Ms. Ros-Lehtinen.

The gentlemen of the Texas Rangers, I have a—I am not an attorney, and I tried to sort through this, some of this, but I have the definition of self-defense, I guess, under the Texas law, the Texas Penal Code, and it says, "The use of force to resist an arrest or search is justified if, one, if before the actor offers any resistance the peace officer uses or attempts to use greater force than necessary to make the arrest or search and, two, when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's use of or attempted use of greater force than necessary." Is that basically the law in Texas as you are familiar with it?

Mr. COOK. That is the law, yes, sir.

Mr. BYRNES. Yes, sir.

Mr. MICA. I want to ask the gentlemen, Dr. Tabor and Dr. Arnold—again, I have to keep going back to this report because this is the report that the Department of Justice asked various religious experts to look at what happened there and make recommendations, and they made some conclusions. They said the Branch Davidians had an apocalyptic world view in which they expected attack from the outside world. The reason for arming themselves was to protect themselves from an expected attack. Is that correct, as you understand it?

Dr. TABOR. Part of it was business. They actually turned several thousand dollars a year by trading guns. And the other part I guess we could say it was at least claimed to be theological. That was to provide self-defense. So part of—the answer is yes.

Mr. MICA. Do you believe, Dr. Arnold, that they believed this? And this is also Dr. Cancero, I think it is, who is the head of NYU Medical Center, the head doctor, psychiatrist there, but this was his observation. Is that something you would agree with, Dr. Arnold?

Dr. ARNOLD. Definitely. They had not only the economic reasons for doing what they did, but also they definitely had religious reasons, in order to protect themselves when the prophecy would one day be fulfilled that they would be attacked. It was not an attempt to go on the offensive and go to war against people, but all the prophecies that they quoted, and I have listened to 51 days of negotiation tapes, almost all of them by now, and they were not intending to have those weapons in order to go to war but to defend themselves when they were attacked. They did believe it would happen.

Mr. MICA. Well, this same doctor who has dealt with probably in New York, I imagine, every kind of strange case you could imagine, he said certainly an armed assault by 100 agents had to be seen as an attack, independent of who fired the first shot. And then he goes on and said, if an armed individual enters your home by force and you have reason to believe that the person represents a mortal threat, you are allowed to fire a weapon in self-defense in most States, as I cited the law. Do you think this is also a correct assumption? They viewed a hundred—and this is in the first assault, with a hundred, the cattle cars coming up, et cetera?

Dr. TABOR. The earliest statement we have from David Koresh on that is made at about 2 in the morning on KRLD radio just after the 28th. So you are now to March 1. And the announcer says, "David, what do you feel about those four agents that were killed?" And David says, "My friend, it was unnecessary." He says, "You don't know us. We don't know you. You came in here. We have women and children."

And so, essentially, he expressed that self-defense—we have the tape and the transcript, if you want it in the record—so that was his view. Then he went on to give the religious side, which is a little more bizarre, but it had to do with the fact that at the end of time you take up a sword rather than lay down a sword, that Jesus had told his disciples, my kingdom is not of this world or my servants would fight, that is pacifist, but now my kingdom is not from here, now, meaning later it would be, so that was their understanding, that you would fight.

Mr. MICA. Before you respond, Dr. Arnold, I want to cite also this report. This report also, and one of the recommendations of the doctor who was retained for this, says, "It is important that the training of law enforcement officials make clear there are individuals who have deeply held beliefs that are sincere and not a screen for criminal activity." Do you believe—do you concur with this finding here? And is that the—was that the case with this situation?

Dr. ARNOLD. That is right. The Branch Davidians had religious beliefs that they sincerely held. They really believed that their religious beliefs were based upon the Bible.

Now, I don't agree with that, you don't agree with that, but that was their religious faith, and it wasn't just sort of a vague, ethereal thing. They thought that the Bible predicted in its prophecies all

the way from Genesis to Revelation that the church community there at Mount Carmel was to do specific things like fly the flag that it flew outside, build its place the way they were building it. Every detail was worked out.

And so on April 13, in negotiation tape No. 217 that Dick DeGuerin wanted to play earlier today, David Koresh expresses this idea that the last days had come. He says in this tape that he went out on his porch. He said, "Stop, there is women and children in here," and a shot rang out and hit the door to the right. That door, he says, kicked. And then he says, "If you don't believe me, look at the videotape. I know you have that tape," he says. "I saw you making it across the road." So from the Branch Davidians' point of view they had been attacked.

Now, I don't know—I am just a simple teacher of religion. I don't know what really happened that day, but he says there is a videotape that will prove it, and he says the door would prove it. Of course, we hear today that that videotape is no longer available or didn't work, but David Koresh did not know that, did he, on April 13?

Mr. MICA. Mr. Chairman, I ask unanimous consent that the tape that he is referring to there be submitted for the record.

Mr. ZELIFF. Without objection, so ordered.

We now turn to the gentlelady from Houston, TX, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

And, first of all, in minding my manners, I want to welcome the Texas Rangers here and thank them for their courtesies. And let me—please, allow me to briefly question you, because I have issues dealing with the religiosity of this group, and I want to ask some questions of Dr. Arnold and Dr. Tabor. So I am going to focus some very pointed questions on Mr. Byrnes and Mr. Cook, and I thank you for being here.

There was some questioning at the very beginning about wining and dining. Are you bought and paid for? Is your testimony here bought and paid for? I am not sure whether you are eating at McDonald's or what, but you gentlemen look like you are well-endowed, strong and could miss a meal, and so food is not an enticer. But are you bought and paid for? Is your testimony here bought and paid for by anyone?

Mr. BYRNES. No.

Mr. COOK. I hate to answer that with just a no. I would like to be a little stronger.

Ms. JACKSON LEE. Go right ahead.

Mr. COOK. Well, out of respect for this panel, I think I will just say no, and that is absolutely absurd.

Ms. JACKSON LEE. Absolutely not, and I thank you for being here.

There are many suggestions of coverup and a variety of suggestions about the Texas Rangers' involvement. I know you are from the State of Texas as the State of Texas' viable law enforcement entity, and my concern—or would like you to respond to your ability during this very tense situation when the HRT team was around to do a full investigation and your very strong effort to do so.

Both of you may answer, if you do it briefly for me, please. Did you make every effort to do a full investigation, even during this very difficult time period?

Mr. BYRNES. Yes, we did. And, of course, early on we were hampered with the standoff and the considerations we had to have for the tactical considerations, the safety of both the HRT and the people inside Mount Carmel. We proceeded with all due speed, as fast as we could on it.

Once the standoff had been terminated by the fire, then we began to go ahead at a faster speed and were able to conclude that, the initial part of the investigation, by about May 15, which was the crime scene search and the gathering of all the physical evidence out there. That investigation went on right up to the time of the trial, on January 10, 1994. But we did conduct what I believe was a very exhaustive and thorough investigation.

The investigation has not been challenged by anybody that I am aware of. As a matter of fact, most of the 17 defense attorneys after the trial publicly said that we had done an outstanding job on the investigation.

Ms. JACKSON LEE. And you had limited resources, my understanding, to even do this. Is that my understanding?

Mr. BYRNES. Yes, we did have limited resources.

Ms. JACKSON LEE. Were you familiar with Mr. Koresh and his followers before this whole incident occurred?

Mr. BYRNES. I had never heard of Mount Carmel or David Koresh before February 28.

Ms. JACKSON LEE. All right. Mr. Cook, would you answer—the fullness of the investigation, the limited resources?

Mr. COOK. Yes, ma'am. Something that probably hasn't been made clear is that I, as the senior Texas Ranger captain, am the commander of all the Texas Rangers in Texas, and, with that, my responsibility was to ensure that Captain Byrnes as the site commander had followed the proper procedures and done what was necessary. I had no doubt that he would do that.

However, I spent many a night in Waco visiting with him, supporting him, ensuring—going to the scene myself and making sure that everything was followed. And as criminal investigators I think, being from Texas, you would agree that the Texas Rangers are well-known for their investigative abilities.

Ms. JACKSON LEE. That I know, and I thank you for that.

Maybe if my colleagues, if we last here long enough and someone might have some additional time I would like to pursue another line of questioning, but I wanted to make sure that we were aware of the fact, limited resources, got right to the point and preserved evidence that might not have been preserved without your presence there, and I thank you for that.

Let me just simply say to the two theologians who are experts—and I am not—frankly, I raised issues at the very beginning of this hearing that I hope in the corrective measures we will have more insight on religion, on sects. Frankly, I wish this had not happened, but let me probe you to clarify what I think has been a continued misrepresentation.

Maybe a branch, but not a Seventh-day Adventist; 135, that is all David Koresh, I think, had in that compound; 1844, yes, they

gathered in the hills, the Seventh-day Adventists, believing something else would occur, but it was not a violent setting. When nothing occurred, they went back to where they came from. They are pacifists and have been pacifists for many, many years. This gentleman was gathering a whole compound of arms.

Now, what I am trying to separate is the ability of David Koresh and his musical talent and his charm to convince people who had been in there for 35 years, and he was a Johnny-Come-Lately with a mishmash of religious beliefs that were not even the purity of Branch Davidians.

One, the worldwide church is millions of people, 750,000 in this country alone. It is a church that gives, that volunteers, that has missionaries. Not David Koresh, did not give, they were confined in this area and not doing any kind of charitable effort whatsoever.

Ellen G. White is what the Seventh-day Adventist Church believes in. They did not—they would not accept her as a prophet. Also the Seventh-day Adventist Church would not in the least have a gentleman who was having sexual contact with children.

So this association with the Seventh-day Adventist Church was broken many, many years ago; and we should make that very clear. And this massing of arms is not the Seventh-day Adventist Church. This was a splinter group.

And we recognize that, as you understand religion—and I hope you share this with me as you give me the answer—churches and religions will also tell you that there are false prophets that they don't believe in, and this may have been, I don't know Mr. Koresh one way or the other, but he may have been in this category. This was a distinct and——

Mr. ZELIFF. Time.

Ms. JACKSON LEE [continuing]. Separate group of individuals that were mesmerized by——

Mr. ZELIFF. Time has expired.

Ms. JACKSON LEE [continuing]. Mr. Koresh who was involved in illegal activities. Do you have a response to that?

Dr. TABOR. Although all but six, I believe, of the Davidians came from a Seventh-day Adventist background, I agree with almost all of your comments. And you are correct, it was a one-way relationship. That is, these people had exited the Seventh-day Adventist Church, that is their background, and gone on to either Branch—Branch Davidian or Koreshian views. They would claim, as all break-off groups I think traditionally do, to be representing the parent body. He quoted Sister White constantly, as he called her, and believed he was her successor. Now, to——

Ms. JACKSON LEE. But did not fully accept her?

Dr. TABOR. To the 7 million Seventh-day Adventists, of course that is an absurdity. It is, like many groups—as you know, the Mormons have the Reorganized as well as the main parent body. It is typical for the breakoff group to claim it was first and more original than the parent group. It was this kind of a fight.

So from the Adventist point of view, the Seventh-day Adventist point of view, it was a one-way relationship. They went out but were not of us anymore. David would say, "You went the wrong way. You should have come with us. We've got 130, so it"——

Ms. JACKSON LEE. I think the violent end I would like to have——

Mr. ZELIFF. The lady's time has expired.

Ms. JACKSON LEE [continuing]. Dr. Arnold refer to is that the violent end was completely in contrast to the teachings of the Seventh-day Adventist Church. I consider it a complete separation. Now, maybe cult training or sect training—I don't want to use the terminology because I know you have disputed that—certainly is needed, but you have to distinguish what you are working with. Thank you.

Mr. ZELIFF. The time has expired.

Ms. JACKSON LEE. If he can answer that.

Mr. ZELIFF. I think you slipped in an extra question there.

Dr. ARNOLD. Well, I didn't answer the first one.

Mr. ZELIFF. Do it in reasonably good time.

Dr. ARNOLD. Very quickly.

Yes, I also agree, as Dr. Tabor does. There is a great difference between the two, and I think the issue of fighting and not fighting is an important distinction you are making.

The one thing I wanted to say, let us not assume, though, that the members of the Branch Davidian religious community were in some way simply mesmerized or hypnotized. No, these people were very educated, intelligent people who were very, very well versed in many, many religious traditions and doctrines.

They had studied these things. They had become persuaded because of their study of history, their study of theology, their study of the Bible that David Koresh was interpreting the Bible correctly. I don't think he was, you don't think he was, but they came to that conclusion based upon their own study of his teachings. They studied and studied and studied these things and came to the conclusions they did.

Mr. ZELIFF. Time has expired.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

I know that we will also look into the issue of the question of power over and over——

Mr. ZELIFF. I think the time has expired. If we keep going with this colloquy, we could be here all night. We could move the clock around, so I would ask you to be a little bit more——

Dr. TABOR. Mr. Chairman, it would help if when addressing the two doctors over here maybe the panel could, say, just alternate, Dr. Tabor, Dr. Arnold, so we don't have to think we each——

Mr. ZELIFF. I think reasonable people can come to a reasonable conclusion, and that let's use a little common sense, and I think it will work out just fine. We always try to let the question be answered, but when we start doing a little dissertation back and forth, that is when we are going to stop the common sense, and we are going to have to say no. That is the way it has got to be, OK? So if everybody would work with us, we will try to get done before midnight.

Ms. JACKSON LEE. I appreciate that, Mr. Chairman. The gentlemen had not been able to answer my last question, but I do appreciate your comment.

Mr. ZELIFF. Shall we have a little session about this? Do you want to say something about this?

Mrs. THURMAN. I want to go on.

Mr. ZELIFF. OK. Regular order, let's go.

I would like to address my questions to Mr. Byrnes, and before I do I would just like to say that I recognize that the Texas Rangers are only second to Scotland Yard in terms of longevity. You certainly have our deepest respect, and we thank you for coming here.

Mr. COOK. Thank you, Mr. Chairman.

Mr. ZELIFF. I have just a couple of questions. Can you confirm that the FBI in any way—and I know Bill Johnston talked about this or wrote about it—changed or destroyed evidence at the crime scene?

Mr. BYRNES. Did they change or destroy evidence at the crime scene?

Mr. ZELIFF. Right. As you went about your investigative approach and the responsibilities that you had to perform, did you see the FBI changing the crime scene in any way, moving things around, things that were not normal according to your established procedures?

Mr. BYRNES. Yes, sir. As I said earlier and didn't get to finish the answer, they were moving the vehicles, which destroyed valuable trajectory evidence. In the end, it turned out it didn't matter because the——

Mr. ZELIFF. But it didn't seem to be standard operating procedure according to what you understand, was it?

Mr. BYRNES. I am sorry?

Mr. ZELIFF. When you see that happening, you don't consider that standard operating procedure, do you?

Mr. BYRNES. Certainly not in any crime scene I have ever been on, no.

Mr. ZELIFF. As you worked with Mr. Jamar and worked with the FBI, did you find them cooperative and respective of your input?

Mr. BYRNES. No, sir.

Mr. ZELIFF. Would you elaborate?

Mr. BYRNES. I am sorry?

Mr. ZELIFF. Could you tell us a little bit of what you mean by that?

Mr. BYRNES. As I said earlier, we had very little contact with them or input early on. The FBI, when they run an operation, they run it, and there is not—you don't work with them, you work for them or you don't get along.

But it deteriorated to the point if I went over there, the door was already closed to where Mr. Jamar was. Several times I waited a half-hour, 45 minutes to see him and never saw him, and I finally quit going over there. We couldn't even get a phone call through. It was total lack of communication.

We were not able to urge any of our concerns—we had concerns about what they were doing to the outside of the crime scene and were told they might have to move the vehicles. Before they did, they would let us urge our concerns. We would discuss it. That did not happen, which was a very devastating thing, I thought, to us.

Mr. ZELIFF. Do you consider this a pretty serious situation?

Mr. BYRNES. I did, yes. As I said, Mr. Johnston considered it so serious that I believe he literally jeopardized his career with the U.S. Attorney's Office by writing that letter to Janet Reno.

Mr. ZELIFF. But doing the right thing?

Mr. BYRNES. Oh, yes.

Mr. ZELIFF. Isn't this what we are all about, trying to do the right thing here?

Mr. BYRNES. Yes, sir.

Mr. ZELIFF. What is your reaction to the criticism that we are all trying to do this, the antilaw enforcement and these hearings? Do you think that is the case or do you think we are really trying to get at the truth?

Mr. BYRNES. No, sir, I don't believe these hearings are meant to be antilaw enforcement. I think that some of the questions that are asked, you know, were maybe not what I would want to be asked, and I have been asked one or two I didn't want to be asked here, didn't think they were quite proper, but that is everybody's privilege. I don't argue with that. I do not think they are antilaw enforcement.

Mr. ZELIFF. Let me ask you this, did you feel the situation with regard to Waco was properly put to bed by the internal investigations by both Treasury and Justice? In other words, was it properly laid to rest? Just tell the American people, look, this was an internal investigation, that is good enough, or do you think we really needed to go further?

Mr. BYRNES. Well, I haven't seen the Justice report. I have read the Treasury report. It was, I think, quite lengthy and exhaustive and covered a lot of items. But I do believe in just talking to people in Texas there are a lot of questions in the American public about this, and I think that it does cast doubt on all of law enforcement, not just Federal, so certainly——

Mr. ZELIFF. Until we get the questions answered.

Mr. BYRNES. To that end we need to clear the air, so to speak. I don't disagree with that at all.

Mr. ZELIFF. Mr. Potts and other folks, did you get the feeling that Mr. Jamar was making all the decisions on the ground there or was he taking orders from someone else?

Mr. BYRNES. My impression was that he was in total command down there. What his—my experience with the FBI is that, normally, they keep the line open to Washington when they do anything, but that has been my past experience with them. On any kind of a significant operation that control is normally exercised out of Washington to a large degree, I believe.

Mr. ZELIFF. So it was run out of Washington?

Mr. BYRNES. That is my understanding. Now, I cannot say.

Mr. ZELIFF. I believe that in earlier testimony today that he indicated to the two attorneys that they had all the time in the world and that there was no big rush and then all of a sudden we had this plan to move in on the 19th?

Mr. BYRNES. I believe that could be one explanation for it. I certainly had no input and very little communication and—although I had more then than I have had before.

Mr. ZELIFF. Let me ask both of you a question to think through. I have a feeling in my stomach that I am trying to figure out where all this goes and who ultimately made a decision prior to April 19 that led to this tragedy. And do you get the funny feeling, I don't know, maybe you are a Texas Ranger and you might want to men-

tion this, who is responsible if you screw up? Does the buck stop with Mr. Cook or does it go all the way up the line? And the same thing with the FBI and the same thing with ATF.

I will now give both of you a chance to talk about your frustrations, about the challenge and what you walked away from in this incident. If you go anywhere in the country they are going to ask you about this. Tell me what your problems were, what were your challenges and where do you want us to ultimately end up on this issue?

Mr. BYRNES. Of course, our problems, as I have already kind of gone over, was the fact that initially we had competing interests down there. We had the standoff that had to be resolved before we could proceed with that crime scene and do the investigation.

Once that was over, then, of course, we were left with a situation that nobody in law enforcement has ever faced before. And I would like to say we did get 100 percent cooperation from the FBI laboratory and support people from April 19 on. I can't say enough good about them. We had a lot of help from other DPS people, so it was a joint effort.

Of course, it was a very frustrating investigation, because the crime scene had been totally destroyed as far as structurally.

First of all, we had the things running around outside and moving vehicles and things. And then, initially, on the 19th we see the tanks destroying, to some degree, the structure and then the fire that totally destroyed the structure.

So we had been making a plan for 51 days down there to go in and, No. 1, get 100 live bodies out of there and do whatever we were going to do, whatever the degree of culpability we could establish there and do that. But then to go in there and do a crime scene search in the structure and these plans, no pun intended, literally went up in smoke on the 19th. So we had to go back to square one, and it was very, very depressing.

I can remember sitting there in the FBI command post on the closed-circuit TV camera watching the fire and thinking OK, start coming out, you have to start coming out of there. Then pretty soon, we had about a 35-mile-an-hour wind down there, and I realized real quick they weren't going to come out.

Mr. ZELIFF. Mr. Cook.

Mr. COOK. Well, let me say I took also Captain Byrnes' information seriously about the cooperation level that we were getting, to the point that I took the letter that Bill Johnston wrote and I got it to our Governor. I gave it to our security guy that was able to put it in her reading, and I had a personal note on there to her to explain what our frustrations were.

She called me, told me that she read the letter with interest, considered the concerns, and gave me a telephone number in the White House and said, if you have any additional trouble, you need to contact this number. People have your name. It is a 24-hour number.

The next day or the day after we were scheduled to have a meeting with a group of people out of Washington, I think some of the higher up FBI and some different people, and she told me, basically, who was going to be in the meeting and so forth and that

things should get better, gave me some assurances that they would get better.

I would have to say they did get better. I think probably midway through, I believe Captain Byrnes will also say this, that we tended to be included more than we had prior to that.

You asked about authority. I think that the responsibility ends with the top level. That is the reason I went to Waco. After I worked my day in Austin, I drove 90 miles many a day, not every day, but almost every day. And I can pass on authority, but I can't pass on responsibility.

The director of the agency, who is my boss, also went to Waco on a number of occasions. We both knew that our careers were on the line also, so we went there to make sure.

What can we learn from these mistakes? I think that is what law enforcement training is predicated on is our mistakes. When we are children and we fall down, we learn if we fall down we are going to get hurt. We learn to walk. And sometimes in law enforcement we have to fall a few times before we learn to walk correctly.

I would hope this would develop a better line of communications with local law enforcement. And if there is no reason not to trust the local law enforcement, I think that at that point maybe the Federal agency should include the locals a little bit more, especially when we have a vested interest in the outcome.

However, we agree that the responsibility for that hostage or siege situation or whatever you want to call it, that that was the responsibility of the FBI, and we didn't intend to interfere with that.

Mr. ZELIFF. Thank you very much.

Mr. Taylor, you are recognized for 5 minutes.

Mr. TAYLOR. Thank you, Mr. Chairman. I have a series of questions, and since I have only 5 minutes, I will ask 5 minutes' worth of questions, and you can all answer them at will.

I want to start with the Texas Rangers, you all have a great reputation, much like the Mississippi Highway Patrol. Would a brave man hide behind children, old women, old men? True or false?

Mr. ZELIFF. Is your mike on?

Mr. TAYLOR. OK, Mr. Chairman.

I want to open this up for the Texas Rangers. We have heard about David Koresh, he said he was the Messiah, said he was there to take Christ's place, in effect. Would a brave man hide behind children? Would he hide behind women and old men?

Mr. COOK. Well, I think that kind of goes without even answering it to say the obvious is no. I think bravery has a much more profound meaning than to do that.

Mr. TAYLOR. Is it the opinion of—I am going to ask the theologians. Having seen everything you have seen where parents gave their 11- and 10-year-old children to Koresh for him to sexually exploit, gave their wives to Koresh, gave everything they owned to Koresh, if Koresh had told his followers to walk out after the first raid, if he had said walk out, would they have done so? They have given him the most precious things they have. He couldn't get them to walk across the field?

Dr. TABOR. Could I say, first, the premise of the question that he gave—these are—until Kiri Jewell testified on Wednesday to my

knowledge there was no sworn testimony. We had newspaper reports, media reports.

Mr. TAYLOR. If I may interrupt, Mr. Tabor.

Dr. TABOR. But you say a man who gave, so I can't agree with——

Mr. TAYLOR. The court ruled that that young lady, when given to her mother in shared custody, was given to her only under the condition that she go nowhere near David Koresh.

Dr. TABOR. My position is that unless something is established legally that we can't say a lot about it. We can suspect things and so I didn't accept the premise. I think most of us are persuaded that these things are true. I am just saying they have been talked about, not established by testimony, but that was the premise.

The question was what, if he told them to come out would they come out? I think he would have to couple it with an explanation from scripture. Now, if he was capable of coming up with that, I think they would have. But in listening to the 250 hours of negotiation tapes you begin to see that what he does is always persuade them from Scripture. He doesn't just say I am the dictator, you now walk out at my command. That wasn't the style. It would be, let's go to the Book of Habakkuk. Let's go to the Book of Nahum. Is this what God requires us to do?

Mr. TAYLOR. Mr. Tabor, that was more of a yes or no question.

Dr. TABOR. The answer is, with Scripture they would, but ordered no. Sorry.

Mr. TAYLOR. I want to turn back to the gentlemen from the Texas Rangers. We have seen in the case of Hussein and sometimes right now in the Bosnian Serbs the atrocious use of other human beings as human shields. Isn't it accurate to say that Koresh kept those children, those old men, those old women around as human shields?

I mean, after all—I turn back to the theologians. Christ knew, according to the Bible, that his end was near. Christ told, if I am not mistaken, Judas, do what you have to do. He didn't grab the apostles around, say bring me a bunch of children to surround me.

If Koresh was really Christ-like, don't you think he would have done what Christ did? The truth of the matter is, the man was nowhere near Christ-like. He was a coward. He was a coward who hid behind children, old men and old women, who could have told them to leave, but he didn't because he was a coward.

And it just absolutely drives me crazy that this committee has spent now 5 days trying to paint the bad guys as the good guys and the law enforcement community of this country as the bad guys. They won't even allow the people who wrote the series, "The Sinful Messiah," the opportunity to come talk before this committee, won't allow the lady who says she was held 3 months against her will to come talk to this committee, the person who said Koresh had a hit list to come talk to this committee.

Mr. McClure, I know there is something you have been waiting to say. Please, in the time I have left, please say it.

Mr. MCCLURE. Most of the time I train negotiators from Alaska all the way to the southern tip of Florida and from several foreign countries. When you go back to negotiations basics 101 there are

two areas that you stay away from in negotiations. One is religion and the other is politics.

Mr. TAYLOR. Do you know of a single instance where an outside negotiator prevented, solved a problem? We keep hearing if they just turned to some outside negotiator that everything would have been fine.

Dr. TABOR. We are not negotiators, sir, and never claimed to be.

Mr. TAYLOR. Do you know of a single instance? That is, your job with the Atlanta Police Department?

Mr. MCCLURE. Retired from the Atlanta Police Department and presently commander of criminal investigation for Douglas County Sheriff's Office.

Mr. TAYLOR. Do you know of one? Yes or no?

Mr. MCCLURE. No, sir, I don't.

Mr. TAYLOR. Thank you.

I have promised to ask every panel the same question thus far. And the question is, do you know of anything, have you heard of anything, have you seen anything that would justify the killing of 4 ATF agents, the wounding of 20 more by David Koresh and his followers?

Let me say that the only person who said yes when I asked him specifically which one of the law enforcement officers, whether it is Mr. Robert Williams or Conway LeBleu or Steven Williams or Todd McKeehan, he couldn't name me the one that he said should have been killed, but one of the defense attorneys, one of the criminal defense attorneys said they should have been killed. Do any of you think that the ATF agents were murdered justifiably?

Dr. ARNOLD. Sir, you are bringing up a question that was discussed this morning at great length. And I am no lawyer, and I don't understand the legal manners of all these technicalities of what murder is or what voluntary manslaughter is, but the discussion this morning by Dick DeGuerin and Jack Zimmermann made the point that they were found innocent of murder. Now, you are saying, was their murder justified?

I don't think that anyone should be killed. I think what happened was wrong. I think it was completely unnecessary that anybody die. Those agents, I weep for them that they were killed and the Davidians who were inside, and—but I don't know what happened that day. I was not there. It was a sad day, and it was unnecessary.

Mr. TAYLOR. Can I take that as a no?

Dr. ARNOLD. Can you take what as a no?

Mr. TAYLOR. Your answer, sir.

Dr. ARNOLD. A no to what question exactly?

Mr. TAYLOR. Can you think of any reason for those people to have died at the hands of David Koresh?

Dr. ARNOLD. I can't think of any reason that would justify people being killed there unless there was an aggressive attempt to assassinate David Koresh, and I know of no evidence for that.

Mr. TAYLOR. Thank you, sir. Mr. Tabor.

Dr. TABOR. I don't think the deaths on either side were justified. I would include the six that were also killed on the other side as well as the four, as well as those wounded.

Judy Schneider was shot while nursing her baby through the chest, so—you know, she showed it on the video, showed her thumb, showed her wounds. That is certainly unnecessary. All of the wounding and killing was unnecessary.

Mr. TAYLOR. Mr. Cook.

Mr. COOK. Well, let me say that if I should die in the future executing a lawful search warrant, I would hope that if this committee took that issue up they would think that it was not justified in someone killing me for doing what the State expects me to do or the U.S. Government expects me to do.

Mr. TAYLOR. Having said this, sir, do you think—have you heard or seen or read anything that justifies the murder of the 4 ATF agents and the wounding of 20 more?

Mr. COOK. No, I do not.

Mr. TAYLOR. Thank you, sir. Mr. Byrnes.

Mr. BYRNES. No, sir, I have seen nothing. Everything quite the contrary, there was no justification for what they did, the Davidians did.

Mr. TAYLOR. Thank you. Mr. McClure.

Mr. MCCLURE. I don't see any justification whatsoever, Mr. Taylor.

Mr. TAYLOR. Thank you very much. Thank you for bearing with me, Mr. Chairman.

Mr. ZELIFF. OK. Who do we have on our side? Mr. Barr, you have 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

There was some discussion previously, and I forget which one of the Texas Rangers referred to it, the letter from Assistant U.S. Attorney Bill Johnston to the Attorney General. Was that the letter dated March 23, 1993?

Mr. BYRNES. I believe that is right, Mr. Barr.

Mr. BARR. Pardon?

Mr. BYRNES. That is right. I believe I have a copy over here.

Mr. BARR. March 23, I would like unanimous consent if we could have it included in the record.

Mr. ZELIFF. Without objection, so ordered.

[The information follows:]

U.S. Departme ·f Justice

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March 23, 1993

Honorable Janet Reno
Attorney General of the United States
Washington, D.C.

Dear General Reno:

After much deliberation, I write you concerning a crisis within our District having to do with the Branch Davidian Cult case.

I was hired about six years ago to open this small Waco Division of the Western District of Texas. I have prosecuted some 1000 defendants in Federal Court in Waco with one acquittal. I now have a small staff and am "chief" of the Division. After the tragic events of Sunday, February 28, 1993, our U.S. Attorney, Ronald Ederer of San Antonio came to Waco and began to make decisions affecting every aspect of the investigation. I believe that his poor judgement and entire lack of leadership have damaged the investigation. Because anyone's decisions could be subject to dispute in such a situation, let me be factual and set forth below a few of the specific instances which depict the problem:

- Mr. Ederer has apparently deemed the leak investigation unimportant. In all of the planning meetings the leak is neither listed in the work priorities, nor tasked for investigation.

- Cellular telephone conversations between agents have been intercepted by local media. Clear evidence exists on this. Much of the interception occurred during the critical first hours of the situation. I spoke with Department Attorneys concerning this matter and received direction on how to handle the situation. After my call, Mr. Ederer spoke with the Department and stated that the interception was merely a nuisance. This "nuisance" has continued to the point that cellular telephone use by dozens of agents working on the case had to cease almost entirely.

- Soon after the shootings, and after consultation with the ATF and FBI, I tried to assemble some sort of investigative team to work the homicide. It was believed that the Texas Rangers would be a qualified, objective agency to the lead the investigation. It was proposed that they would work in conjunction with other agencies and with crime laboratories. Mr. Ederer instructed me to

halt any efforts in that regard, and stated that the issue would be decided high above my level. He never again gave me guidance or permission in this regard. His remarks helped to lose one participating agency, and caused hesitation on the part of others.

- Our local District Attorney's Office, with which we have enjoyed a great relationship with for years, has offered to assist by making its forum available for Capital Murder charges, should the facts qualify. Mr. Ederer has expressed no interest in this. He has not consulted with the District Attorney nor asked anyone else to do so.

- Two elderly women were the first to be released from the compound soon after the siege began. Mr. Ederer made the decision to charge the women with conspiracy to murder. There was no evidence to support this charge other than the fact that the women were in the compound. Because of this, and complaints by the FBI that negotiations would be harmed, Mr. Ederer dismissed the charge. We looked silly, inept and confused.

- The FBI is using tanks to push vehicles away from the compound. This is destroying important trajectory evidence because these vehicles were being used by the agents during the shootout as cover and were riddled with defendant gunfire. The FBI's position is that the vehicles are being moved for tactical reasons. This may be so, however, our concerns about the preservation of evidence go unheard, and Mr. Ederer has done nothing to help us express our position to the FBI.

- This past weekend, three individuals who left the compound spoke with Texas Rangers about the gun battle. Two of these elderly people identified cult member Brad Branch as a shooter (Branch came out of the compound Friday). One witness said she observed Branch running from room to room shooting. She twice heard Branch say "I got one!" I planned to present this case, along with a couple of others to our Grand Jury later this week. I had one of my assistants here notify the FBI of our intentions. Although we did not hear back from the FBI, we did here from our San Antonio office. Apparently the FBI became upset and called Mr. Ederer, who instructed us not to charge anyone with anything (other than being a material witness) until further notice.

As stated above, anyone's judgement could be questioned in such a difficult situation. However, the problems caused by Mr. Ederer's lack of good sense may impede prosecution of a case which is seen by many as vital to federal law enforcement. I hope that this letter has not seemed disrespectful. I recognize that the U.S. Attorney is the boss. I feel, however, compelled to express my concerns to you and am willing to face any consequences for doing so.

Respectfully,

William W. Johnston

WILLIAM W. JOHNSTON
Assistant U.S. Attorney

Mr. BYRNES. That is correct. That was the date of it.

Mr. BARR. Thank you. I do have a couple of questions for the two Texas Rangers, but before I do that I would like to extend a welcome, as a representative of the seventh district, to Mr. Frank McClure, who is from the Seventh District of Georgia. It is an honor to have you here, Frank. Thank you.

With regard to the hierarchy and the chain of command, Mr. Cook, perhaps you would be in the best position to answer this. Who do the Texas Rangers report to?

Mr. COOK. I report to the director of the Texas Department of Public Safety.

Mr. BARR. And that person reports to the Governor?

Mr. COOK. No, sir. He reports to a three-person commission, and that commission is appointed by the Governor in staggered terms. So we don't directly report to the Governor.

Mr. BARR. OK. Is one of the primary duties of the Texas Rangers to conduct criminal investigations?

Mr. COOK. It is.

Mr. BARR. OK. What is the point or the goal of conducting one of those investigations? Would it be fair to say it is a search for the truth and to obtain evidence objectively?

Mr. COOK. Absolutely.

Mr. BARR. OK. During the course of your investigations, is it standard procedure for somebody at a higher level than the Texas Rangers that you have identified to direct that your investigation cease?

Mr. COOK. Well, there hasn't been anything usual about this particular investigation as far as the Texas Rangers were concerned.

Mr. BARR. I am not talking about this particular investigation. I am talking in general terms.

Mr. COOK. Unusual, yes, but not unheard of.

Mr. BARR. OK. Would it be unusual to receive a directive that says, stop interviewing witnesses because they may be developing exculpatory evidence?

Mr. COOK. Well, I think if you said that that was the reason for stopping, developing exculpatory information, I think you would have to look a little further to make sure that is exactly what the intent of that directive would be.

Mr. BARR. It would raise a question in your mind that would have to be explored a little further?

Mr. COOK. Well, exculpatory evidence is something we develop from time to time when we do an investigation. There is a certain amount of exculpatory evidence in any investigation.

Mr. BARR. Absolutely. Whether or not an investigation proceeds forward, say in the early stage, should that be determined simply because it may churn up or turn up exculpatory evidence? Should that be the reason an investigation proceeds forward or not?

Mr. COOK. Well, I think, first of all, as an investigator I have a responsibility to develop and report exculpatory information, if for no other reason than to get the prosecutor advised to what lays in wait out there. So I would think that that would be a necessary step, to investigate that.

But keep in mind in the context—I think this letter—we heard some of the earlier testimony—in investigations in our own agency,

we have some of our administrative investigations stand down until we get our criminal investigation done. Because they can take our reports and use them in the administrative investigation, which usually serves a purpose, but we can't take necessarily theirs because there is certain rights that go along with employees that we interview. We can force them to give us a statement under the civil process or under the administrative process where we can't do that under the criminal.

Mr. BARR. If such a directive came down, if there were the sort of situation that you have described where there might be an administrative proceeding as well as a criminal investigation proceeding, would that directive indicate that the reason for requesting that you stand down on one investigation be temporarily to allow another to proceed forward, for example?

Mr. COOK. Yes, sir. That would be the reason.

Mr. BARR. OK. Simply receiving a directive to stop so that no further evidence is accumulated, that would be unusual?

Mr. COOK. Well, I don't know if it would be unusual. I think that these types of investigations are unusual, first of all, so we don't have—this is not a common investigation where you have a personnel interest or an administrative interest as well as a criminal interest, OK?

Mr. BARR. Maybe I misunderstood. I thought that the Texas Rangers conducted a wide range and a large number of investigations each year. Is that not true?

Mr. COOK. Outside this investigation?

Mr. BARR. Yes. I am not talking at all about this investigation.

Mr. COOK. The only administrative investigations that we conduct are on our own personnel, on the Texas Rangers themselves. As far as outside the Department or in the Department, that is usually handled by our internal affairs or someone else, but we do conduct criminal investigations that involve our own personnel in our agency.

Mr. BARR. OK. That is what I am really talking about is a criminal investigation. Would it be unusual to receive a directive that a criminal investigation stop simply because it may develop evidence that might be exculpatory down the road?

Mr. COOK. Well, I can say that I never received such a directive.

Mr. BARR. OK. In how many criminal investigations have you participated? Would you hazard a guess?

Mr. COOK. I wouldn't want to hazard a guess. I have been in law enforcement for 30 years, and I have been a Texas Ranger for 21 where I primarily investigate offenses, so I have investigated hundreds.

Mr. BARR. Let me ask you briefly, Mr. Cook, about another area, and that is media. Do the Texas Rangers have guidelines concerning contacts with the media in ongoing investigations, particularly undercover investigations that spell out very clearly the circumstances under which statements may be made to the media prior to an investigation going down?

Mr. COOK. Prior to the investigation going down, it is discretionary with the personnel involved in the investigation. Once the investigation or once charges are filed, in the case where charges

are filed, we defer all news inquiries to the prosecutor simply because we don't want to jeopardize the case.

Mr. BARR. Right. But prior to that, would one of the determining factors, for example, be the risk of disclosing an undercover investigation prematurely?

Mr. COOK. To answer your question, we very seldom—in fact, we have a no comment press comment, and we do not interact with the press with regard to our criminal investigations that I can recall. We just don't do it.

Mr. BARR. Is that basically a pretty sound law enforcement policy?

Mr. COOK. It is a policy that is presently in drafting stage because I am putting it in writing. Prior to that, we have had a verbal policy that we restrict contact with the media except where we have to make contact.

We don't go out—and, if you notice, we have never been on "Top Cops." We are not on any of these shows. We stay out of the media as much as we can. We would not advance notice the media that we were going to do a raid, if that is what you are asking.

Mr. BARR. That is what I am asking, and I thank you, Mr. Cook.

Mr. ZELIFF. Do you want to pass?

Mrs. THURMAN. We would like to pass.

Mr. ZELIFF. By prior arrangement we are going to pass on this side. We are going to yield now to Mr. Buyer 5 minutes.

Mr. BUYER. Thank you, Mr. Chairman.

Dr. Arnold and Dr. Tabor, were either of you interviewed by ATF or Treasury with regard to their reports?

Dr. TABOR. No, we weren't.

Dr. ARNOLD. No, no, not at all.

Mr. BUYER. I think it is perhaps a little outrageous for Mr. Conyers to have said today some purpose to try to rehabilitate Koresh. That is pretty—an outrageous comment. Because I think what I am getting out of today is we are hearing from witnesses whereby they are not in this. The administration likes to stand by this as though it is the complete record, and we are finding out that it is not. We are discovering that perhaps there were—and, hopefully, we can get into it—tensions between the Texas Rangers and the FBI.

First of all, before I get into that type of thing, let me say, extreme compliment not only to your heritage of Texas Rangers but also the magnificent job you continue to do. Thanks for coming up here. Of course, it is easy for me—having been not only in prosecution and defense, it is inquisitive to me to say why would Treasury have brought you up here and wined and dined you if, in fact, they were so worried about some things? It is amazing. It is that coaching process, right, guys?

Mr. COOK. I think it is good intelligence to be able to come before you and testify.

Mr. BUYER. I hear you. I hear you. You are also very tactful as a Texas Ranger.

Let me also say that I think what has also been obvious is there is a tremendous disconnect, a disconnect between those who were on the ground who were the operators and the negotiators and that of the politicos in Washington, the politicos in Washington that are

captured by the do-something mentality. We have to do something. We have to do something.

It is easy to look at Waco in a vacuum, but we also have to remember what was going on in the dynamics of the politics of the time in early 1993, about an administration in turmoil in domestic policies and foreign policies and trying to catch traction and they couldn't catch traction. There were a lot of things that were going on that a lot of people can remember.

The one thing that, in fact, has bothered me, though, is that we heard testimony today from the two defense lawyers who were also part of the negotiations about a deal, about the deal, and Mr. Koresh's mental state about whether it was a deal or it wasn't a deal.

My question to you, Dr. Tabor, you have listened to over 250 hours of these tapes. It appears to me by some of the transcript here of these tapes that David Koresh was pretty convinced that if he could be permitted to finish writing the seals that he was going to participate in the surrender, and that there was a change in mental frame of mind.

And people on the ground knew and believed, and I think it is quite obvious that the defense lawyers felt they got used in the process, because perhaps the politicos in Washington they were going to do something and not really yield to those on the ground who were actually trying to move toward a peaceful settlement. And so this disconnect in the communications is very bothersome to me.

And before I ask this final question, the other thing that is bothersome to me, we have the two defense lawyers discuss about the deal and their mental aspects of the deal. And then we have the gentleman—who was it? I guess I want to call it part of the damage control team, Richard Scruggs, the Assistant Attorney General, has to run and get on PBS to say there was no deal. There was no deal. There was no deal. I see the gentleman sitting right there behind you. That is pretty amazing.

Would you please, Dr. Tabor, bring us up—you are listening—in your opinion, about those 5 days in the mental state of Mr. Koresh and whether there was a deal or there wasn't a deal.

Dr. TABOR. Obviously, I wasn't there. I am going by the tapes.

Basically, there were three things. There was a signed letter that David sent out with his legal papers that he considered to be a legal surrender offer or a plan. It doesn't give the details of when, but it had to do with the manuscript.

But you have to go back a little, we might not do it on this question, to understand why that was a breakthrough. He is responding directly to what we had suggested to him when the FBI allowed material to go in on the last day that the lawyers went in, on April 4, Sunday, before Passover. This is a direct response to that. We can explain that later.

The other thing is listening to the tapes. You can exactly see the mental state of the people inside. It is buoyant. David says, did you take a shower for me, Dick? Yeah, I took a couple. They are talking about coming out. They are excited about it.

And, finally, interviewing the survivors. I spent a month with David Thibodeau in Israel trying to help him through the grief

process, introducing him to people over there that I knew, trying to get his mind off Waco.

We talked many, many hours. He said, "We were so joyful that weekend because we knew we were coming out, that finally David had got his word of how to do this legally, the lawyers, and theologically in terms of his system."

So that is the evidence. The evidence is in the tapes. I would urge all of you who have time to listen to the last 5 days. It is very clear.

Mr. BUYER. When I said the disconnect is when you have those operators on the ground, the negotiators actually saying we have got a deal, the mental state here of Mr. Koresh that he is going to write these things and we are going to move out. But yet on April 14—we are going to get into this in the next couple of days, about the meetings with the Attorney General, about, you know, how are we going to move in? We are going to do something, by golly. We are going to move in. We have this huge meeting and what discussions then were related to the President. Well, we don't know. We will have to see. And the President wants to use executive privilege on stuff. He can do that, and we can talk about that.

Dr. TABOR. Janet Reno kept asking, is there an argument for waiting? Give me an argument for waiting. One of the things that we would like to know, I would like to know, I am sure you would like to know, was she given this argument for waiting? I know she was shown something about the letters that we can explore in a further question, but was she given the argument that I just gave you.

Mr. BUYER. To the Texas Rangers, as I understand, there were three surrender scenarios, and there was some indication that Koresh would have surrendered to the Texas Rangers and not the FBI. Would you comment on these three surrender scenarios and whether or not that indication is true or not? Thank you.

Mr. BYRNES. To my knowledge, there was never an offer by the Davidians to surrender to the Texas Rangers. There was some conjecture at one time early on that they might do that.

Capt. Bobby Prince and I, who was involved in that at that time, went to see Mr. Jamar and offered a Ranger to help with the negotiations, if that would be helpful—not one of the captains but one of the Texas Rangers that had been trained, most of them, by the FBI. He thanked us for that offer, and we never heard anything else about it.

Later on, Captain Cook and I met with Mr. Zimmermann and Mr. DeGuerin, and Mr. DeGuerin talked about them surrendering to the Texas Rangers. Captain Cook told them that that would have to go through the FBI because they were in command there, it was their deal, and we would not approach them, that they would have to, in other words, approach us. Where that went from there, I don't know. We had one meeting. I was there.

I think Captain Cook could tell you about some other conversations he had with Mr. DeGuerin after the fire, and we got into the investigation. We were listening to the Texas Rangers, that is, were listening to the negotiation tapes for exculpatory or criminal-type information.

One time, I was called in to listen to an excerpt of a tape, I believe on about March 12, with Steve Schneider where he is talking to the FBI, and the negotiator tells them that the Texas Ranger is going to be doing the investigation. And he, in fact, interrupts the negotiator and says, I would like to talk to one of you sometime.

The negotiator goes on to finish his statement, and Schneider comes back and says, what would be the chances of me talking to a Texas Ranger? And he goes through, the negotiator talked to him, well, we would have to clear it with the bosses here and in Washington, and a scenario is passed over.

So that—if that is what you are talking about, that is what I know about it. But as far as a formal offer or declaration from the Davidians that they would surrender to us, to my knowledge, that was never made.

Mr. ZELIFF. The gentleman's time has expired.

Mr. Scott from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

The gentleman from Texas is a member of the Government Reform and Oversight Committee and would like to participate and, obviously, he can't, so I would yield my 5 minutes to him. He has been a member of the Texas—was a member of the Texas Legislature prior to coming to Congress, and I am delighted to yield my full time to him.

Mr. GREEN. Thank you, and I thank my colleague from Virginia. He also served many years in the Virginia Legislature and, in fact, in the Senate, so I appreciate his courtesies.

Let me first say that, obviously, Captain Cook, you know, from all the years growing up in Texas—and we have a lot of pride in the tradition of the Texas Rangers, but no one is always perfect, obviously, and I think today a lot of our colleagues are recognizing that, and there is high expectations today, you know, for the Texas Rangers being here.

Let me first say this is not necessarily for the panelists. But my colleague, Mr. Buyer, has made some allegations here concerning whether the mark of the new administration—and if there is any shred of evidence that the President or the administration devolved, I would hope if they haven't called a witness that would say that we would—maybe we could call other witnesses of the 90 or more that we have.

But let me remind my colleagues that in March 1993 we had a new administration. In fact, I think the President would probably love to go back to those poll numbers he had in March 1993, in April 1993, instead of what he is seeing today. So whether they needed a success or not in Waco, considering what was happening in New York with the World Trade Center bombing, I would hope that we would look at factfinding instead of making political allegations.

Let me get down to the questions now, and I think I have learned something from these days of hearings. One is that Captain Cook, if you can, that the FBI and the ATF did not associate with local law enforcement. You offered, the deputy sheriffs offered, and the FBI takes it over, and they don't bring anyone in.

Do you think we ought to try and change the law that unless there is allegations of local corruption that we would require a Fed-

eral agency to associate and bring in local law enforcement? In this case, obviously, the Texas Rangers or maybe the deputy sheriff. Because there were allegations of child abuse. It is a violation of Texas law, may not be Federal law, and so maybe we should require that. Do you think that would be something we should look at?

Mr. COOK. I think there is certainly room for Federal law enforcement as well as State law enforcement. I think that this Congress should give a lot of consideration not to make it a national police force and invest in all of the power in one entity of the Federal Government such as the FBI.

As far as the ATF, quite honestly, we work real close with ATF, because they have a lot of people that have a lot of local law enforcement influence in their agents, and we have a pretty strong bond with ATF. This doesn't change the outcome of our investigation of course, but I would have to say that in all fairness to that.

Mr. GREEN. So you know you don't—do you think we should? Because, again, if your concern is a national police agency like the FBI, if we require them to bring in whenever there is something—particularly if there is a violation of local law, in this case in Waco?

Mr. COOK. I think when you have a shared interest, yes, I think that somehow or another there should be a shared understanding there, because the local agencies have an interest, and a vested interest, in what's going on in their community.

But I don't know how you get that done in a way, because there's different levels of trust, there's different levels of violations, there's different levels of lots of things, and just like in this case the FBI was the proper person to handle the siege part of it, because they are better equipped, they have got more personnel power, they have got more equipment, they have got sophisticated stuff.

You know, probably one flight of an airplane probably would eat up our budget.

Mr. GREEN. I can understand that. Let me—you mentioned earlier to some questions concerning your service of a search warrant or arrest warrant in a similar situation that you are charged like the ATF on the Federal level or all law enforcement to serve an arrest or search warrant.

If you could—and, again, we are all Monday-morning quarterbacking here—how would the Texas Rangers do it differently, knowing what you know about Mr. Koresh, and you had a search warrant and arrest warrant for that location, that individual?

Mr. COOK. I was afraid we were going to get asked that question. That is a difficult question.

Mr. GREEN. I want to still be your friend, Captain.

Mr. COOK. And I, too, yours. But that's a difficult question to answer, because we train different, we think different a lot of times, and even though we have the same overall objective of executing the search warrant, I'm not sure that I have—and this is kind of a copout—that I have all the details available to me, even though I know a lot of things I've heard in the committee and so forth, to make that assessment.

I would tell you, first of all, probably we would have done it with a lot less people just because that's the way we do it.

Mr. GREEN. Because you don't have those resources.

Mr. COOK. Quite honestly, we might have. Even though all those weapons were in there, we might have gone up and knocked on the door.

I don't know that we'd have done that. That's the reason we have captains and the reason we have lieutenants. We would have gotten together and discussed it. In all probability, we would have discussed it with people even who weren't assigned to the task force or the search warrant.

David may be able to shed light on that.

Mr. BYRNES. Mr. Green, what I think he said, he'd send me to the door.

Mr. GREEN. That's what captains and lieutenants are for.

Mr. BYRNES. I assume so.

Mr. COOK. Ranger captains are designed to lead and, quite honestly, I find it real difficult not to get personally involved in lots of things, but I accept my administrative responsibilities.

Mr. GREEN. Our first panelist we had was an author who is well known to us in Texas, Dick Reavis, who in the jacket of his book—and I have to admit, I haven't had a chance to read his book, but it says—Mr. Reavis points out that the Government had little reason to investigate Koresh, even less to raid the compound at Mount Carmel.

Do you feel like that the Federal Government had reason to investigate Mr. Koresh and, because of information you know, that any other law enforcement agent, other than the FBI or ATF, would have investigated him and also had reason to arrest him?

Mr. COOK. Absolutely. And I would say to this committee that I am somewhat embarrassed that the Texas Rangers, even though we are a small group and we don't know of all the crimes going on in Texas, I'm somewhat embarrassed that we were not aware of what was going on in the compound, because I personally don't think that we would have tolerated it any more than anyone else, and for that reason, you know, I feel bad that we did not have an opportunity to put a stop to it.

Mr. GREEN. Mr. Chairman, I won't ask a question, but let me just remind the panel of the old saying in Texas is that instead of having 90 agents, there was only one Mount Carmel, we might have only needed one Ranger to take care of it.

Mr. ZELIFF. Thank you very much. The time has expired.

Now the Chair yields to Mr. Coble from North Carolina for 5 minutes.

Mr. COBLE. I thank the chairman.

I just came back from a supper meeting. It's still supper to me, not dinner. And many people have portrayed these hearings as Democrats versus Republicans, which I think is very unfortunate, but some people insist upon doing that.

I just met with a Democrat, former elected official in the South, ardent Democrat, and I told him where I was going, and he said to me, "When I saw it on TV almost 2 years ago" he said, "I said to my wife, Betty, have the Federal agents lost their minds?" That was his instinctive response. And then he went on to elaborate: Inserting gas where there are women and children? And I thought I would share that with the committee. It happened about an hour ago—an hour and a half ago.

Mr. Cook, as you pointed out, you stumble, you try to find out what caused you to stumble and not do it again, and that's the purpose of these hearings: Find out what went wrong and then correct it.

I just said to my friend from Maryland, I said, I've never met a Texas Ranger before today, but I think I would like most of you. Now, Walker, Texas Ranger, is a little too smooth for me sometimes. You boys are a little closer to the ground. Good to have you all—that's a compliment.

Mr. COOK. I appreciate you making that observation.

Mr. COBLE. Thank you.

Mr. ZELIFF. Thank you for that description.

Mr. COBLE. That's down home good to have you all here. And, speaking from down home, I want to welcome Dr. Tabor. He does not live in my district, he does live in my State.

Dr. Tabor, I'm sure many people say to authors, "I'm going to read your book the next 4 or 5 days." Dr. Tabor, I will read this book prior to the year's end. But before this year ends, I will have read "Why Waco?"

I want to pick up on the gentleman from Mississippi, his questioning to you, to the two religious experts. I am not uncomfortable—strike that.

I am comfortable being a Presbyterian. I probably would not have been comfortable at Mount Carmel. Different strokes, different folks. But one feature that escapes me, and see if you fellows can bring me in tow or get me in tow, I'm a pretty broadminded guy, but I cannot square anyone accepting the fact that his wife and his daughter should be surrendered to anybody. There obviously must have been scriptural foundation for that because, as we have heard today and prior to today, these—many of these folks were intelligent, sound people.

Illuminate for me.

Dr. ARNOLD. Well, why don't I say a couple of words about it, and then I will let Dr. Tabor enlarge on it.

Briefly, just right to the point, David Koresh interpreted Solomon's 45 that as a messianic prophecy in the last days a prophet-like figure would come to whom many, many wives would attach themselves. And he took a verse out of First Corinthians where the Apostle Paul writes that "Those of you who have wives, be as though you have none."

So there were two or three passages that he used in his own way, believing that he had somehow been given this revelation of what those verses meant, and he was able to exercise that there at Mount Carmel.

My point is there were religious reasons for his actions, as disgusting as they are to us.

Dr. TABOR. What I would say on that is it's covered in the book. There's a whole section on that.

But my concern in these hearings and in this testimony is to say what could have been done to get them out, regardless of these practices that I think just about all of us would find bizarre, if not absolutely immoral. And so it's not sidestepping the issue, because we need to understand what was going on inside.

But when you come down to it, it comes down to a question of not how he behaved and justified it scripturally. I think it's interesting. That's why I have to cover in it a comprehensive on a book on Waco.

But when the Government confronts such a group, even if the leader is totally evil by any normal standard, what are the procedures for dealing with such a person? So that would be my answer. But the details are in the book. I'm glad you are going to read it.

Mr. COBLE. I look forward to reading that, Doctor.

And, gentlemen, I must declare a consistency with you. I don't care how evil or how despicable it was within, and from what I can gather, it probably was. It goes back to what my friend said tonight: Have they lost their minds? Retrospect, 20–20 hindsight, I will admit, but bad things happened at Waco, both inside and outside.

Doctor, did you want to be heard again?

Dr. ARNOLD. I wanted to make one comment as an example of a problem that I think needs to be solved relative to your issue, your subject.

I believe it was yesterday when some ATF agents were testifying. It was amazing to me to hear the honorable agent—I think was Rodriguez, correct, Robert—make the statement that he communicated the teachings of David Koresh to his leaders, and one of those leaders—and I'm sure it's on the record—was asked a question whether or not he understood that the Branch Davidians were expecting to be attacked in their prophetic interpretations; that is, did he understand that their prophetic interpretations represented that they would be attacked someday?

And the answer I thought was going to be no, we didn't know they were thinking that or we wouldn't have done that because that would have been self-fulfilling. His answer was, "Yes, I knew that, because Robert had communicated that to us."

That's what we want to help stop from ever happening again with law enforcement. If a religious group has an understanding of prophecy or some kind of religious position that it has taken, you've got to factor that into your law enforcement activity or else catastrophe looms on the horizon.

Why didn't the ATF go to an expert in religion and say, "We've got this preacher out here; what is he up to? What would happened if we pull up with 80 men and point shotguns at him?"

Mr. COBLE. Doctor, that ever-present red light illuminates. I will withdraw.

Thank you, Mr. Chairman.

Mr. ZELIFF. The gentleman's time has expired. Thank you.

Mr. Schiff from Arizona, for 5 minutes.

Mr. SCHIFF. Well, Mr. Chairman, Texas has always claimed us on one end, and I suppose Arizona does on the other, but New Mexico is right in between.

Mr. ZELIFF. New Mexico—I beg your pardon.

Mr. SCHIFF. Captain Byrnes, very briefly, you made reference: Sometimes I'm asked not the questions I want to be asked.

Is there a particular question about this you want to be asked?

Mr. BYRNES. No, I said I was asked some questions I didn't particularly like to be asked.

Mr. SCHIFF. Captain Cook, you said that Mr. Bill Johnston wrote a letter to the Attorney General. Would you say again who Mr. Bill Johnston was?

Mr. COOK. Yes. He was the U.S. attorney that was there in Waco, in the Waco office.

Mr. SCHIFF. Substantively, quickly, what did he say to the Attorney General in that letter?

Mr. COOK. Well, he was basically having problems. He felt like that—the whole operation had problems with the acting U.S. attorney in San Antonio that was the—that was his boss. And also that there was some other problems with just coordination in there with the FBI. So it did point out some of the problems that we were having.

Mr. SCHIFF. And did you see that letter?

Mr. COOK. Yes, sir. I have it here in front of me.

Mr. SCHIFF. Do you agree with its content?

Mr. COOK. Yes, sir, I do.

Mr. SCHIFF. Mr. Chairman, I ask unanimous consent that the letter be in the record, if that wasn't done earlier.

Mr. ZELIFF. Without objection, so ordered.

Mr. SCHIFF. Mr. Chairman, I'm going to yield in a moment, but I would like to just say before I do that I've heard witnesses ask over and over again if anything justified the death of four ATF agents on February 28.

And I want to make it very clear that nobody is trying to justify those deaths. Quite the contrary. I think one of the major purposes of this hearing is to try to prevent such deaths from taking place in the future to law enforcement agents, as well as to people who are not law enforcement.

In this particular case, these agents were ordered forward in a plan that was poor to begin with. The agency insisted upon a military kind of strike, against any other consideration of any other approach. It was a poorly executed plan, from having undercover surveillance people who were easily spotted to going ahead after surprise had been lost, and it was poorly managed throughout.

I believe that the main point is that law enforcement agents are often ordered to go forward in inherently dangerous situations, and when it happens again—and it will at some point—we want the agents to have a better chance of surviving than those four agents had.

With that, I would like to yield any time I have remaining to Mr. Mica.

Mr. MICA. Thank you, Mr. Schiff.

Just a couple of points, gentlemen. First, to the Texas Rangers. I'm from Florida, not from Texas, but if you looked out the window and saw 100 heavily armed people running toward your house with their guns drawn in Texas, what would be your reaction?

Would you think you're in danger?

Mr. COOK. Well, if I had more guns in my house than was being charged and knew that some of them were illegal and had been sexually assaulting folks, I think I'd know why they were there.

Mr. MICA. But you didn't know—I mean, the Texas Rangers didn't know that was the situation. I think you testified you didn't really know what was going on in there.

Mr. COOK. We were told——

Mr. MICA. You were pretty close to it, weren't you?

Mr. COOK. We were told the day before.

Mr. MICA. Didn't someone during this attack dial 911, or weren't they calling for help from inside?

Mr. COOK. Yes, sir; they did.

Mr. MICA. I have a question to doctor—last question to Dr. Arnold. The reason that we have this whole proceeding is, you know, you have an executive branch, a legislative branch. The executive branch did their review, and it's also contained—their findings are contained in this report, and they assembled some of the best experts in the country.

And the best experts in the country, including Dr. Sullivan from Harvard University, said: The lack of knowledge about religious—religions among law enforcement agencies may simply reflect a wider cultural unawareness about the nature, role, and importance of religion and an inattention echoed in other realms of public policy and cultural analysis, from corporate boardrooms to congressional hallways, newsrooms of television networks or newspapers and college classrooms.

Do you concur with their findings?

Dr. ARNOLD. Yes; I definitely do. I think there are many Americans who don't realize that there are many other millions of Americans who have very strong religious faith, and that this religious faith is not just secondary to their lives but is primary to their lives.

There are people—Jews, Christians, Muslims—who study their sacred scriptures. Every day they pray. They feel as if they have a personal relationship with their religious faith. And often you can find with Madison Avenue culture or the daily soap operas that reign supreme on television that this importance of religious faith is left out.

Mr. MICA. My understanding is, in reading the report, again, every one of these conclusions say that we didn't pay enough attention, or law enforcement, Federal law enforcement in this instance didn't pay enough attention or consult independent experts or outside counsel on this.

Dr. Arnold, you've established a task force to assist law enforcement agencies understand religious groups. Isn't it true the FBI has sort of said, "Don't call us, we'll call you"?

Dr. ARNOLD. We wrote a letter to Attorney General Janet Reno in 1994. We sent copies to FBI and to Assistant Attorney General——

Mr. MICA. But they have basically done nothing.

Dr. ARNOLD. That is correct. We received a reply back, 1 month, but since then, there's been no phone call ringing.

Mr. MICA. The purpose is to find out what we can do to make sure this doesn't happen again and correct the situation, and you're saying this report confirms really that they have recommended something and then done nothing.

I want to ask my final question to the Texas Rangers.

If this incident took place in Texas under your watch, and you know the situation here, would somebody have been fired?

I bring my chart up all the time and show that even the guys that were fired got rehired. Nobody—a couple of people retired early with full benefits, and then we paid back.

If this had happened under your watch, wouldn't there have been a heck of a stink and people being fired in Texas?

Mr. COOK. Well, first of all, I think the—at least the aftermath would point that we would fire unhonorable people. I'd like to think——

Mr. MICA. Can you be fired for lying as a Texas Ranger?

Mr. ZELIFF. The gentleman's time has expired. If you can just answer the question that he just asked.

Mr. COOK. Not only fired but, under the circumstances, prosecuted, because something that the committee has not asked, but we were commissioned early on in this as deputy U.S. marshals to carry a special commission, so that we could prosecute federally anyone that lied to us, and we feel real comfortable, and Captain Byrnes does, that we were lied to.

Mr. MICA. I thank you.

Mr. MCCLURE. Mr. Chairman, I don't want to be out of order. Could I respond to Mr. Mica?

Mr. MICA. Mr. Chairman, if he could.

Mr. MCCLURE. I've heard——

Mr. ZELIFF. Absolutely.

Mr. MCCLURE. I've heard over and over the question brought up and all about, if religious experts were consulted, would this situation have turned out differently?

In 1987, I was involved in a situation in Atlanta where 1,400 Cubans were holding 121 hostages. Their religious belief was very important to them during that period of time. Those hostages were held for 12 days.

Every time that we gave negotiations and responded to their religious questions and got into their head or tried to get into their head and they tried to get into ours about religion, no progress was made. When we talked about secular issues, substantive issues, we got people out.

From what research I have undertaken at Waco, Mr. Koresh was given every opportunity in the world to come out. Mr. Koresh lied several times to the negotiators. He said that he was going to come out after the first tape was played, but he didn't come out.

The ultimate decision—and I wept for those people that died there, I wept for every one of them, but the ultimate outcome was in the hands of David Koresh. He was given every opportunity, all those people in there were given every opportunity.

And as a negotiator, we give them those opportunities no matter how we have to do it. If we have to bring in other law enforcement agencies and other law enforcement consultants, we do it. Whatever we have to do to resolve a situation without loss of life, that's what we try to do.

Negotiations in this particular instance got out 35 people. Thank God those 35 people didn't die inside that place.

I'm sorry, I just had to respond.

Mr. ZELIFF. The Chair now recognizes Mr. Shadegg for 5 minutes.

Mr. SHADEGG. Thank you, Mr. Chairman.

I want to start by saying that at the start of this particular panel one of my colleagues from the opposite side made the remark that much had been done today through the first panel to attempt to rehabilitate Mr. Koresh. That was the exact language: To rehabilitate Mr. Koresh.

That is an outrageous charge. No one here is seeking to rehabilitate Mr. Koresh. What we are seeking to do is to find out some facts about what appears to be a pretty badly botched raid that resulted in the death of four courageous BATF agents and in the ultimate death of 80 other people, including women and children. And it seems to me that that is an important task, and it seems to me we ought to be asking as many serious questions as we can.

I want to begin, Captain Cook, from the Texas Rangers, with you. Early on in this hearing, we determined through some testimony that one of the agents of BATF was offered a chance to go into the compound and to look at these alleged weapons. He declined at the time to do that. He later told his supervisors about that offer. Yet from that moment in time forward, at no point in time did they ever take up the offer from David Koresh to go in the compound and look at those weapons.

Had you been in charge of this whole situation and been offered early on a chance to go in and look at the weapons that were allegedly illegal, would you not have taken up that offer?

Mr. COOK. This is prior to any of the shooting or anything?

Mr. SHADEGG. Yes, sir.

Mr. COOK. Of course I'm second-guessing what the reasons were for this person not doing it, but my gut feeling is to answer your question, is to say yes, sir, I would have gone in, and I feel it would have been a good intelligence factfinding, and I would have got more probable cause for the search warrant.

Mr. SHADEGG. You bet. And you might, for example, if there was an allegation of a meth lab, given that meth labs put off a lot of odor you might have been able to make some sense of whether or not there was a meth lab.

Mr. COOK. The purpose of any investigation is to determine what you don't know a lot of times, and that, to me, would be just an investigation to determine what is going on there. There's quite a few things that you might determine.

Mr. SHADEGG. Absolutely.

Captain Byrnes, what about you? Had you been in charge, would have you gone in?

Mr. BYRNES. The only reason I wouldn't have gone in, if it—the circumstances I was in there, in the investigation at the stage where it would have compromised something, you know, I don't believe Koresh, you know, if he has any sense at all, is going to show me an illegal weapon now, you know.

But I'm like Captain Cook, if you can get in there and look around and find out something, you should be better off.

But I would have to, you know, condition that on the fact that not knowing where he was and what that would make or done to the investigation, but I think with all things being considered and all things being equal, I probably would have tried to take advantage of that.

Mr. SHADEGG. Well, if, for example, at that point in time you'd known how many weapon bodies and how many additional parts he purchased at least from that agent, or from that seller, you would have known that if he was supposed to have had 230 weapons that he had purchased, and you went in and he only showed you 10, you would at least known that his offer wasn't genuine, wouldn't you?

Mr. BYRNES. Yes, sir; I believe you would.

Mr. SHADEGG. You gentlemen I assume have listened to the testimony about the whole issue of a dynamic entry. It seems to me if you were going to try to seize this compound, you certainly would want to have the element of surprise on your side, would you not?

Mr. BYRNES. Yes, sir.

Mr. COOK. Yes, sir, I would, too.

Mr. SHADEGG. And would that suggest to you that you would perhaps raid the compound at an earlier time of day than 10 a.m. in the morning?

Mr. COOK. Well, of course, there again, not maybe having all the facts, I'm not—I've often thought if I was in the planning stage, given everything I know now, and I'm not so sure I wouldn't have raided it whenever I knew that they were having a religious service where they were all gathered in one place where they normally would not have guns.

And I see our religious leaders shaking their head that that wouldn't be a good time, but that still is my law enforcement opinion. They would all be there, and unless they hand in the gun when they come in and worship, they would probably not have any weapons in there.

Mr. SHADEGG. What about the issue of arresting Mr. Koresh outside the compound? Is that something you would have at least explored extensively, from your experience?

Mr. COOK. I think I would have considered it, however, as pro and con, because, No. 1, first; you take their leader away from them and they might be in more confusion and maybe more prevalent for violence than if Koresh himself was there. So I think it's pro and con on that.

I don't know that I'd have that I'd have taken him outside. I think that, given that last scenario, I might have considered that, given all the facts that I know today.

Mr. SHADEGG. Dr. Arnold or Dr. Tabor, what's your view? If he had been taken on the outside, would it have cut the head off the snake, would resistance in the compound have been diminished?

Dr. ARNOLD. I agree with Joyce Sparks when she said that for something tragic to happen to the community, he would have to be there with it, the body would have to be there together, the whole group.

I wanted to say that I am very, very, very concerned that the message that we are trying to bring here is not really getting through. We're not saying that this group just had general religious views that we should have really studied and investigated, and it might have really been nice to have done that.

What we are saying in this particular case that the group followed certain specific teachings in this book that they thought were in this book. They were following a literal script, scripted out.

Every detail, every day, everything they did was planned according to their prophesies that they had studied 10 years before.

We're bringing you a very special insight here. This group had very specific, detailed teachings. We have an expert to show you what those were.

Mr. SHADEGG. I hate to cut you off, but I'm going to run out of time here in 1 minute, and I want to ask Mr. Foster one last question.

You are a trained negotiator?

Mr. MCCLURE. McClure. My name is McClure.

Mr. SHADEGG. I'm sorry. Mr. McClure, you're a trained negotiator?

Mr. MCCLURE. Yes, sir.

Mr. SHADEGG. And you have had special training in that, haven't you?

Mr. MCCLURE. Yes, sir.

Mr. SHADEGG. Have you ever been involved in a negotiation where there were women and children who were in the area where the hostage situation was, whether they were hostages or not?

Mr. MCCLURE. I've been involved where children were involved, yes, sir.

Mr. SHADEGG. Would you ever in a hostage situation—if there were children present and if there were women present and they were not, at least so far as you knew, actively involved in crime or in criminal conduct, would you ever ignore their presence and just assume that what you had was not a hostage situation, but a situation where everybody involved was a criminal and there was an obligation to get in there and arrest those individuals?

Mr. MCCLURE. In any hostage barricade situation, there's some basic alternatives that you have. Of course, immediate assault being one, use of a countersnipe or gas being one. Of course, contain the situation and negotiate.

From day 1 in negotiation training we start and say that if you start at the lowest level of force, go all the way that you can with that, you can always escalate the amount of force that you use in a situation, but it's very difficult to deescalate the amount of force that is used.

To be specific in answering your question, if there were children involved—and I have been involved with situations, like I said, involving children—I would have had hated to have to insert gas in there.

Depending on the situation itself and like the situation in Waco, I don't think—let me put it this way: I think I would have tried to exercise some more options and tried some more things before I would have inserted the gas.

Mr. SHADEGG. Thank you very much, sir.

Mr. ZELIFF. Do you want us to go one more?

Mr. Ehrlich from Maryland, 5 minutes.

Mr. EHRLICH. Thank you, Mr. Chairman.

I guess I'm compelled to make two observations before I ask my questions. My first observation is this: Only on Capitol Hill could the characterization of David Koresh as a—and I've kept a list—self-proclaimed prophet, child molester, statutory rapist, evil, despicable, mentally unstable, head of the snake by my friend from

North Carolina, six, likely manufacturer illegal weapons, and a real bad guy, on this side of the aisle, be deemed an attempt at rehabilitation by someone on the other side of the aisle. I think I included "despicable."

My second observation particularly for the Texas Rangers is this: I hope you all know from being here that what we are trying to do is maybe to some extent rehabilitate but also to strengthen the American people's confidence in law enforcement at the Federal level, and I think you can see how sincere we are and the commitment that we have by the number of members on this side of aisle at this time of night.

Now, my question to the Texas Rangers, to Captain Cook and Captain Byrnes, is this: I had an opportunity to view a review of the "ABC News" interview from a few weeks ago, and I got from that—the conclusion I drew from that was that it was your opinion that Koresh really did want to surrender to the Texas Rangers rather than the Feds.

And in our attempt to try to get to the bottom line with respect to factual conclusions, I really want to ask you that question. I realize you've testified to this issue probably an hour ago, but what is the bottom line testimony? What is your bottom line view with respect to that issue?

Mr. COOK. Well, first of all, I know Captain Byrnes will want to comment on this also. I don't believe you've seen me on the news saying anything about that, No. 1.

Mr. EHRLICH. That's true; it was Captain Byrnes.

Mr. COOK. Yes.

Second of all, I don't know of anything, other than the testimony by the defense attorneys and Dick DeGuerin—and Dick DeGuerin is an honorable person that I know from Texas, and he is one of the most respected defense attorneys that I know of, and if I got in trouble, that's who I'd want to defend me.

But all that said, my negotiation or my involvement with David Koresh surrendering was through Dick DeGuerin, and he and I had a conversation on the phone several times, and we met in person, and I took Captain Byrnes with me because he was the site commander, and we did discuss the possibility.

But there was one thing that was paramount, is that we would not negotiate that surrender with the FBI, because that was Dick DeGuerin's idea and I felt like he needed to carry that idea to the FBI, because I didn't want to give the impression that the Texas Rangers were grandstanding on any of this. This was too serious for the Texas Rangers to try to upstage, if you'd have it, the FBI. That was not our goal.

We do respect the FBI, and it's difficult for us to come in a public forum and discuss our misgivings or our problems that we have in law enforcement, because I really think that a lot of that can be worked out on our own.

But now that you know what problems we might have had, maybe y'all can help work them out.

Mr. EHRLICH. Thank you.

Captain Byrnes.

Mr. BYRNES. Well, in that interview you saw me, if I gave the impression that I thought they were going to surrender, I didn't

mean to do it. I think I said that there was some discussion that they may have and that Dick DeGuerin had indicated they would.

I personally do not believe that Koresh would have surrendered, ever come out of there. That's my personal opinion.

Mr. EHRLICH. I'm sorry. Repeat that. He would not have surrendered to anyone?

Mr. BYRNES. I do not believe he would have surrendered and come out, and I base that on what I think is logical thinking.

Now, whether he thought logical or not, I don't know, but I look at it in reward and punishment. We had no reward to give him to come out. I mean, he didn't have anything to gain by coming out. So I do not think he would have surrendered.

Mr. EHRLICH. OK.

One last question for the Texas Rangers. I really appreciate your appearance and your time here tonight.

Are you familiar with the memorandum that has been produced here and has been the subject of questioning by various members, particularly Mr. Barr, concerning the production of exculpatory material and the directive from the Department of Justice with respect to the criminal trials?

Mr. COOK. Yes, sir; we've discussed that with the committee earlier.

Mr. EHRLICH. How long have you all been involved in law enforcement, each of you?

Mr. COOK. I've been involved 30 years.

Mr. BYRNES. 26 years.

Mr. EHRLICH. Have you ever seen a similar directive in the course of your professional lives?

Mr. COOK. No, sir; I have not.

Mr. BYRNES. No; I have not.

Mr. EHRLICH. Thank you, Mr. Chairman. I yield back the remainder of my time.

Mr. ZELIFF. Anybody on our side want to finish his time?

Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Ehrlich.

Captain Cook, you said that Government officials lied to you and that you—you, the Texas Rangers, I believe—were actually deputized as U.S. Federal marshals, so that you could go after anyone if they actually—it was proved they lied to you.

One thing I think is interesting is, that's the first time. That's not mentioned either in the Justice Department report or in the Treasury report. So there's a couple of other things that weren't in there.

For the record, you had said that there were some folks that did lie to you. Could you say which Government officials did lie and your best reasoning as to why they were not prosecuted?

Mr. COOK. I would defer that question, if it's OK, to Captain Byrnes, because he was closer to the situation.

Mr. CHABOT. Absolutely, that's fine.

Captain Byrnes.

Mr. BYRNES. The two persons we believe lied are Chuck Sarabyn and Phil Chojnacki. That was referred to Mr. Johnston for criminal prosecution. We asked him to proceed with whatever measures would be to file under I believe it's rule 1001.

My understanding as of Friday—I spoke with Mr. Johnston about that, I believe it was Friday morning of last week. He said that had been referred to main Justice, and I would assume it's under advisement there. We did attempt to have them file them for that. We think we've got a good case.

Mr. CHABOT. Thank you.

Mr. ZELIFF. The time has expired.

The Chair recognizes Mr. Brewster from Oklahoma; 5 minutes.

Mr. BREWSTER. Thank you, Mr. Chairman. Sorry I had to miss part of the meeting. I was in another meeting.

This may have already been asked, but I know that you said that you were aware of the April 19 raid on April 18.

Were you aware of the one that started February 28, prior to it starting, the ATF raid?

Mr. COOK. I was not personally made aware of it, but our area commander, Captain Prince, that was in Waco, was advised the day before.

Mr. BREWSTER. But you weren't involved—they didn't invite you to help you help them plan the raid or work it in any way?

Mr. COOK. No, sir. Not the Texas Rangers. There were some Department of Public Safety SWAT team people, negotiators, and so forth as part of the ATF overall plan. I think there were at least four personnel present at the site that did not participate.

Mr. BREWSTER. OK.

Now what I want to do is let each of you tell me anything that we haven't asked that we should have. Start with you, Commander Cook. Is there anything you want to bring to this hearing that has not been—that you haven't had the opportunity to say because this is rather an unusual format here?

Mr. COOK. Well, we're somewhat humbled by being here, first of all, being from Texas, and to have the Congress have an interest in us, and we certainly have been treated politely, and I want to thank the committee for that.

As far as offering new evidence or testimony in regard to this, I think so far testimony has been adequate. There's been lots of questions asked, and I have nothing—we're here at your pleasure, and we'll certainly respond, and I guess one of my favorite sayings is, if you don't want an answer, don't ask the question, and that's our position.

Mr. BREWSTER. Captain Byrnes.

Mr. BYRNES. Well, I would echo Captain Cook's thanks to the committee, and we are honored and privileged to be here.

I have a concern, I think, that is greater than this, and I have written to my Congressman and Senators about it—first time I've ever done that in my life—and that's my concern that we are fast going down the road to a Federal police force in this country. We seem to have a tendency to federalize every crime.

Right now, everything from carjacking to evading child support is a Federal crime in this country, and that really worries me. And I think in this kind of hysterical state we're in after Oklahoma City that we run a big risk of passing some very repressive laws that are going to be, in years to come, detrimental to our civil rights in our country. And as a law enforcement officer, I worry about that.

I think that for law enforcement to be effective it has to be accountable, and to be accountable it has to be controlled at the lowest possible level. And it worries me to think that we are vesting—and I don't mean to be, you know, singling FBI out, but we seem to be vesting a tremendous amount of authority in the FBI to take over every aspect of civil law enforcement in this country, and I just—you know, I feel strongly about that.

I think it's detrimental to our continued freedom in this country, because I don't believe anybody wants a national police force in this country, and I certainly don't, and I just—I just think that we need to kind of step back, take a deep breath, and look at this thing, and, you know, all the militia stuff and all that, and it is serious, there's no doubt about it.

But maybe we ought to figure out what has happened to disaffect so many of our citizens with our Government. What has happened over the years to cause these people to so just absolutely, passionately hate the Federal Government?

And, you know, people talk about being antigovernment. I think sometimes I'm antigovernment. You know, I—I don't like paying all the taxes I pay and a lot of other things, you know, and I resent the fact that I think every aspect of our daily life is intruded into some way by some level of Government.

I'm not going to go out and take up arms against this country. Quite the contrary, I'm going to defend it. I'm going to defend the Constitution of Texas and this country as long as I can. But I just think we ought to look at that, and I thank you for your indulgence on that, and I didn't mean to get on my soapbox.

Mr. BREWSTER. Captain Byrnes, you echo about what every Texas Ranger I have ever talked to has ever said. Thank you for your comments.

Mr. COOK. If I could just add, we can't separate sometimes our personal feelings from our professional stances representing our agency, and I have to say that several of our comments may have come from the heart as opposed to what our agency has asked us to represent.

Mr. BREWSTER. Mr. Arnold, anything that you've not been able to say that you would like to, quickly, because we are going to run out of time shortly.

Dr. ARNOLD. Yes. I would like to say that it's important all of us, whether we are Democrats or Republicans or whatever we may be, to take a moment to consider the fact that a lot of times there are accusations of people being cultists or zombies or Holy Rollers, or all kinds of ugly words are used. It's sort of like hate speech, and sometimes that reduces someone who has a strong religious faith, and that we totally disagree with, but it can reduce them to simply an object as a member of a group.

And we have to watch that and not be influenced by those in our society who would want to reduce religious experience to some sort of a brainwashing disease.

What we want to do is look at people as individuals, call in experts from the American Academy of Religion or the Society for the Scientific Study of Religion and get their opinions, at least, before we take law enforcement activity against them.

Mr. BREWSTER. Very good point.

Dr. Tabor.

Dr. TABOR. I think what you asked, what we haven't had the opportunity to say, is why April 14 was a breakthrough, in David's theology, why they were coming out from a theological viewpoint, I think you can make a strong argument, and what the gentleman mentioned, no positive reasons for him that he would do so. I think there are very positive reasons. So I haven't been able to bring it out yet, but I expect that we will as we go on.

Mr. BREWSTER. Mr. McClure.

Mr. MCCLURE. I would just like to say, Mr. Brewster, that, sure, I think there were some mistakes that were made and there were some bad judgments in certain situations, but, again, I fall back to my premise that once the situation was in progress, Mr. Koresh had every opportunity in the world to come out.

He lied over and over to the authorities about coming out. I think that was very significant. Why then should they believe him when, all of a sudden, this revelation came forth that he was going to come out?

It's hard for me to accept that a man on the inside of that compound who deemed himself and who referred to himself as God—how in the world could you trade and offer him to come out and be an inmate? To me, he never would have come out of that place. I think he would have stayed in there, and in fact he did stay in there until what you might say the bitter end.

I think all the negotiation efforts possible were put forth and he was given every opportunity in the world. Any of those people could have came out any time they wanted to. They were given that opportunity. I think Mr. Koresh had that hold over them.

Mr. BREWSTER. I guess one of the major questions is whether the end should have occurred on April 19 or maybe May 30 or even given him the opportunity for more days.

Mr. ZELIFF. Mr. Brewster, your time has expired.

Mr. Tabor, do you feel you got shut off on your answer? Were you OK?

Dr. TABOR. Well, he simply asked what we haven't brought out yet, and I mentioned why it was a breakthrough and what the motive would be and I assume we will explore that. I didn't want to take 5 more minutes to explore that.

Mr. ZELIFF. Thank you for that, I appreciate that.

Mr. Heineman from North Carolina is recognized for 5 minutes.

Mr. HEINEMAN. Thank you, Mr. Chairman.

To the two gentlemen from the Texas Rangers, I have over the course of my 38 years in law enforcement conversed with 30,000–40,000 police executives and police officers, and by far you two are the most impressive I've ever sat and listened to. I think your organization and the whole State of Texas can be very proud of you, not because you answered exactly as I would have answered but because you are extremely impressive.

Mr. COOK. Thank you.

Mr. BYRNES. Thank you.

Mr. HEINEMAN. I had a hundred questions to ask you, but after 3 hours, every one of them has been exhausted.

But I want to get back to April 14. Mr. DeGuerin had a supposed deal with Koresh that he was going to have Mr. Koresh surrender to the Texas Rangers, and you were aware of that.

Was the FBI aware of that?

Mr. COOK. I can't say because the only thing I can tell you is what Mr. DeGuerin said, and he said he did convey that to the FBI.

Mr. HEINEMAN. OK. Just some quick questions. I promised I would yield some of my time to Mr. Bryant.

Mr. McClure, how would you have brought closure to this siege? In 10 words or less.

Mr. MCCLURE. I would say, "Come out."

Mr. HEINEMAN. Excuse me.

Mr. MCCLURE. I would have told him, "Come out. You have every opportunity that you can. Come on out. Put your arms down and come out."

Mr. HEINEMAN. And if he did not do that?

Mr. MCCLURE. I would have waited.

Mr. HEINEMAN. OK.

Mr. Tabor, same question: How would you have brought closure to that siege?

Dr. TABOR. Allowed him to deliver the manuscript he was working on, which was the key to the whole thing when you understand it.

Mr. HEINEMAN. And do you believe that he would have surrendered to the Texas Rangers?

Dr. TABOR. That was an important part of the agreement. He was a very Texas boy in that sense. He had a sense of southern independence, didn't like dealing with what he called the beast. That would be the Federal Government.

Mr. HEINEMAN. How would you have brought closure to it?

Dr. TABOR. As I said, to allow him to finish it and come out and——

Mr. HEINEMAN. And if he didn't?

Dr. TABOR. If he didn't come out, my job was over; I did what I could. I would have no—nothing to do with it, obviously.

Mr. HEINEMAN. Mr. Arnold.

Dr. ARNOLD. Yes, I would have——

Mr. HEINEMAN. In 25 words or less.

Dr. ARNOLD. I would have waited, and we had the promise, a promise this time that was based upon his religion, and that was the very reason he waited all that time and finally he had the word to come out. He would have been out within about 10 days. I'm absolutely convinced of that and don't doubt it for one moment. Listen to the negotiation teams the last 3 days, and you'll agree with me.

Mr. HEINEMAN. OK. I'd like to—thank you, gentlemen. I would like to yield the balance of my time to Mr. Bryant.

Mr. BRYANT of Tennessee. I thank my friend from North Carolina.

I have some questions I'd like to ask, and I usually try to refrain from commenting, but I've listened to some of the comments that have been spoken earlier today, and I want to again stress publicly that no one on either side of this aisle has a monopoly on moral

superiority in this case, and in fact, I don't know the biographies of my colleagues on the other side of the aisle, but I can look around me on this side of the aisle and see Chief Heineman with 38 years of law enforcement experience as a police chief.

I can see, in addition to myself, another former U.S. attorney to my left; a State prosecutor to his left; Mr. Schiff, State prosecutor in New Mexico; and I think at least one more of us, Steve Buyer, military prosecutor—a number of folks on this side of the aisle who have made those hard choices.

It would be easy to sit back and just say, well, David Koresh was a bad guy and he deserved what he got. But those of us who have been particularly close to law enforcement over the years are concerned with the reputation of law enforcement, and I am very pleased to join in with Mr. Heineman in my commendations to the Texas Rangers. You certainly lived up to your reputation.

But unfortunately, as the hearing has developed, other people have made mistakes on the Federal side and are perhaps facing a sagging reputation across this country and one I think the oversight of this committee is restoring if we can do that.

Now, with that said, the topic at this point is negotiations, and I want to get back to negotiations and particularly the Texas Rangers; you were there firsthand.

Do either one of you gentlemen know—did you hear from any Federal agent out there before April 19, before the final raid, any reason, any reason they gave, for having to go in at that particular point in time and not waiting until later on? What did you hear as the reason why they had to go in that day?

Mr. COOK. We were not included in the tactical plan whatsoever, but I would defer that to Captain Byrnes and let him respond to that also.

Mr. BYRNES. As I testified earlier, I was called on the afternoon of the 18th, and by Mr. Jamar, to come to a meeting, and I was briefed on the plan that it would start at 6 a.m. and just what the basics of the plan were. I was—if there was a reason given—and I don't believe there was—I don't recall it. It was just that that's what—that was the next step in the plan.

Mr. BRYANT of Tennessee. OK.

Now, Mr. McClure, you've referenced a prior siege you had at Atlanta with Cuban refugees.

Mr. MCCLURE. Yes, sir.

Mr. BRYANT of Tennessee. I assume one of the first things you did as a negotiator was try to find somebody who could speak their language.

Mr. MCCLURE. Of course.

Mr. BRYANT of Tennessee. Somebody who could communicate to them in Spanish, and I sort of equate that situation the same way. I see a fault here that we didn't have the people in place giving advice who could speak David Koresh's language. I know he spoke English, but I'm talking about the language of the Bible that he referred to, and that was a concern I had from the standpoint of giving advice.

Would you agree that would be accurate, a fair criticism?

Mr. MCCLURE. I think you have to communicate to the subject on his or her level.

Again, referring back to the situation in Atlanta, we did; we brought in trained Spanish-speaking negotiators so that they could speak their language and understand.

But again, they were trained negotiators. I like to use as an example psychologist or psychiatrist, with all due respect. I don't know of any of them that's negotiated with people—negotiated with anyone held holding a gun to anyone's head. They negotiate—treat people in a clinical setting.

We deal with people that have shot and killed people and try to get them out without any further loss of life, and whatever we have to do to do that, that's what we try to do.

Mr. BRYANT of Tennessee. I agree. Thank you.

Mr. ZELIFF. Thank you.

Mrs. Thurman.

Mrs. THURMAN. Thank you, Mr. Chairman, and let me thank the witnesses, and I know it has been a long, long day.

Captain Byrnes, were you here during the previous testimony of the last panel?

Mr. BYRNES. Yes, ma'am.

Mrs. THURMAN. OK. When they had talked about Koresh and the Davidians were peaceful practitioners of Christianity and who were just merely defending themselves from attack.

You conducted a criminal investigation. Based on your investigation—and if you could do this real quickly—what really happened, in your eyes?

Mr. BYRNES. I think that a lot of those people in there, most of the people, were true believers. I think they were totally committed. My personal opinion is that Koresh used religion, and I think somebody on this panel said he didn't use the Bible, he abused the Bible and I believe that's what happened.

Mrs. THURMAN. OK. And there was some controversy this morning about Paul Gray. Do you remember who recommended Paul Gray?

Mr. BYRNES. What happened with Paul Gray getting there about on day two after the fire, I was told, and I believe by an assistant U.S. attorney, that a national arson team was being assembled in Washington, DC, to come work the arson.

That tickled me to death. I had about 500 things to be doing. I said fine. I put that aside. The first time I ever heard of Paul Gray was when he showed up down there maybe the next day. That's all I know about him.

Mrs. THURMAN. And the evidence—we've had a lot of controversy in this hearing about the evidence, and I understand you all hold the evidence and the arsenal or whatever. We've talked about bringing it up here, not bringing it up here.

Briefly, could you just give us an account of what you found?

Mr. BYRNES. Well, there were about—I think about 300 weapons found in there, including two .50-caliber weapons, what they call barrets, I believed they're called barrets. I believe the firearms expert testified in court and up here that 48 of those weapons had been converted illegally to full automatic.

There were silencers in various stages. Some of the weapons had silencers on them.

We recovered five live handgrenades out of there and outside the compound that some of the people that came out of the fire dropped.

There were machine tools in there that were capable of altering these weapons and also manufacturing the silencers.

We found tubing that was consistent with the tubing that was used on the silencers.

Mrs. THURMAN. So it was pretty massive.

Mr. BYRNES. Oh, yes. Tremendous amount of evidence.

Mrs. THURMAN. Thank you, I don't mean to cut you off, but, Dr. Tabor or Dr. Arnold, the first question I need to ask you is, prior to the time coming to talk to the FBI to become a part of the negotiators, had you ever talked to Mr. Koresh prior to that?

Dr. ARNOLD. No, never.

Mrs. THURMAN. OK. Then let me go to the report very quickly, because in the report they actually mention you as being one of those that sent in a tape so you were a part—I mean, I realize you showed up. They did allow you to have some contact with Mr. Koresh, correct?

Dr. ARNOLD. Yes, I think it was Agent Jamar, did permit two audiocassette tapes to go inside.

Mrs. THURMAN. OK. Let me just suggest to you that there were several others—I don't know if you have seen this report—that actually were brought on. There was a Dr. Bill Austin, the chaplain of Baylor University. There was one by Gerald Bingham who actually had known Koresh. Bingham recalled that Koresh plotted to seize control of the Branch Davidians from former leader George Roden. He recalled that Koresh thought of the Branch Davidian movement as a game for gain.

Bingham mentioned that Koresh likened himself to the Biblical King of Cyrus and those who did not follow him were with Satan, and there is referred Trevor Delafield, Dr. Wallace, Dr. Fredericks, Dr. Michael Lanes, and Dr. Glen Hilburn.

So in all fairness here, none of these people are getting an opportunity to testify before this committee. I mean, you can see that that is happening here.

Dr. TABOR. Part of the reason perhaps is that Koresh responded directly to us and maybe not to these others.

Now, I've never charged that the FBI did not consult religious experts. What I have said is that the FBI on the final 3 days did not take into consideration the dynamics of the religious apocalyptic situation. That is, they delivered to Koresh what he thought someday would come, and that is the death of the community.

Mrs. THURMAN. Well, in one of these—and I don't know that I have time—there is one in specific here that does talk about that. That was his area of expertise. And these were Seventh-day Adventists. These were people who had done those things.

Dr. TABOR. But most of them, like Joyce Sparks, she is not a religious expert, but in the community, if you recall, everyone who has known has said you shouldn't have gone in like that, that's not the thing to do with the religious community.

Mrs. THURMAN. OK.

Let me ask another question, and, Mr. McClure, let me ask you before I get off this issue. In your years of experience, would that

have been the proper way to go about these negotiations, is by bringing in several of these different people to sit down and talk, discuss what was going on?

Mr. MCCLURE. We would have consulted people in those particular areas, but we would not have let them actually participate in the actual negotiation.

Mrs. THURMAN. Why is that?

Mr. MCCLURE. We teach in negotiations, again, 101, that you try to stay away from using third parties, because they are not trained as crisis negotiators. They may be used to sit down and talk across the table with someone and argue views back and forth, religious philosophy, whatever it might be, not just necessarily religion, but they are not trained in dealing with people in crisis situations.

Mrs. THURMAN. OK. And the fact of the matter is, they could have different opinions of and interpretations of what had went here.

One last question. One of the things that has really bothered me through all of this is that we really almost have two different groups of people here. We have those that left. We have the Lisa Jents, the Robyn Bunds, the Kiri Jewells, those.

And if you heard my testimony earlier—the questions I asked earlier, specifically giving us the indication that this prophecy would be fulfilled, I mean the details would change as David received more messages from God that there was never a time when we didn't expect to be killed by the Feds who David saw was Babylon—that was Kiri Jewell—and so forth and so on, and then we've got the group that comes out.

I mean, is it a possibility—and I don't know this—that there were those—I mean, Lisa Jents said that this new coming, that she went to a hotel and read the Bible because she was very concerned about being taken away from her husband.

Was it a possibility that there were those who were still mesmerized by Mr. Koresh and those that had gone out and said, you know, I just really don't believe what he's saying anymore, that we might not be getting a really good account in that kind of a situation?

Dr. ARNOLD. I guess you are referring to those that came out, that survived the fire.

Mrs. THURMAN. Before that, and who left before that.

Dr. ARNOLD. Right. Yes, I think——

Mrs. THURMAN. Began to question.

Dr. ARNOLD. During the 51 days, or you mean——

Mrs. THURMAN. No, before that.

Dr. ARNOLD. There is no doubt there were some people who began to disagree with David Koresh on the theology. They did that because they studied his theology. They determined it was false but, see, it's a thinking process. They are looking up Hebrew words, Greek words, consulting with the rabbis and teachers. It is not just that they fell out of being hypnotized. They studied themselves out, and others studied themselves in. It was a very complex intellectual kind of religion, believe it or not.

Mrs. THURMAN. I think it all is, any religion.

Mr. ZELIFF. As you were just starting to fly off, the time has expired.

The Chair would like to recognize Mr. Bryant from Tennessee for 5 minutes.

Mr. BRYANT of Tennessee. Thank you again, Mr. Chairman.

Mr. McClure, I don't think anyone here and I don't think Dr. Arnold and Dr. Tabor are advocating that they should have been the ones doing the negotiating. I think what we are trying to say, and I think you are in agreement with us on this, is that perhaps the negotiators, the trained negotiators, should have used folks like that who were more familiar with the Branch Davidians to give the negotiators counsel and advice.

As an example, this idea that David Koresh did not like the Federal Government, and perhaps rather than having him negotiate directly with the Federal Government, the FBI and ATF, he apparently had a better relationship with the local sheriff or the Texas Rangers; and had maybe the Federal agents had a better appreciation for this Babylon, this Federal Government, perhaps a better negotiator could be found who was actually trained in that field.

Now, the second thing is I want to again—Mr. McClure, because I think you have been invited at the invitation of the other side here, and I wanted to—you haven't answered a lot of questions because you haven't been asked a lot of questions tonight, but would you agree that this technique that the FBI did choose to use where they played, I understand, Nancy Sinatra music, and hopefully not "These Boots Were Made for Walking" but——

Dr. TABOR. That is what they played.

Mr. BRYANT of Tennessee. But that and the sounds of screaming, dying rabbits, would that be what you would want to do, or would you rather try to develop a rapport? We are not talking about Manuel Noriega. Wouldn't you be trying to develop a rapport, at least, and wouldn't that other tactic be harmful to that, and shining lights at night?

Mr. MCCLURE. As a negotiator, that is one of your purposes, Mr. Bryant, is trying to establish trust and rapport with the person that you are negotiating with.

I agree with you, I don't think the decision was a wise decision to play those chants and so forth. In Atlanta, at the Federal pen, we use similar techniques, but we play the positive messages.

It is my understanding, prior to all that music being played, there were some positive messages being played so that everyone inside the compound would know what the negotiators were trying to do. That is what we tried to do in Atlanta, so we could make sure that all the Cubans inside there knew what the negotiators were trying to do and the message would get out to all of them.

The direct answer to your question: I don't think it was a wise decision at all to play those chants and the music, especially whatever Nancy Sinatra was singing.

Mr. BRYANT of Tennessee. To be clear, we don't want to bash Ms. Sinatra.

Mr. MCCLURE. Oh, no, I wasn't.

Mr. BRYANT of Tennessee. Thank you.

A moment ago, I think you did answer a question, and perhaps Dr. Arnold and Dr. Tabor may have disagreed, from the gestures. About this issue of David Koresh, you felt he lied a number of times, and I just want to give them the opportunity to respond in

terms of Mr. McClure's statement that Mr. Koresh had ample opportunity and lied several times that he was coming out but, rather, did not.

Dr. TABOR. I am not sure where this has come from. It has become folklore now. Representative Schumer gave you the list. He could only come up with 4 out of 51 days. I would contest three of them. The last one was what would happen on the 14th. That was a lie. So that was the future—I mean on the 19th, you know, that he would come out. The only—I went through very carefully, tallied, kept score.

The one I couldn't find that could be called a lie would be the March 2 promise when they played the tape. He said he would come out after playing the tape. He explains that for the next 50 days, that is one of the things they talk about constantly.

If you are a man of God, why didn't you do what you said? What he says is I got a word as I was being loaded on the stretcher to wait. I have only had this a few times in my life. It is a voice. When I hear it, I do it, and I connected it to a Scripture, the Fifth Seal, where it says that they will wait for a period, and that is what he says, and he says that is what I had to do.

Then he got a word right at the end, and so actually it is fairly consistent, wait and write, and that is the 51 days. The rest of it is basically talking about many, many things, some boring, some fascinating, some just jovial, joking back and forth about what we are going to eat when we get out.

Dr. ARNOLD. A lot of those so-called lies have to be looked at very carefully on the negotiating tapes, and I think you will find it is really sort of 50–50, there is always the other side of the story. Maybe he didn't send someone out, but, then again, he thought he was going to get some milk, or the milk was not coming to the women and to the children, and the women no longer had milk because the stress had dried up their milk-producing capabilities.

So there was some going back and forth on issues like that, so—and I am sure people are going to follow it and say look at all these lies he told.

I just say, listen to the negotiation tapes and decide for yourself on that. Wait. He waited 51 days, and then he said the word came to him and said write, and he wrote. This was brought out the day of the fire by one of the survivors; he was keeping his promise of April 14. We believe they would have all come out safely.

Dr. TABOR. I think it is interesting that Mr. Schumer, who must have combed the record, came up with four examples, the last of which was a prediction of the future, that he wouldn't have done it, so really we end up with three, and I would contest the two middle ones. So surely he would have found them had they been there.

Mr. BRYANT of Tennessee. Your statements, again, I don't think anyone here is trying to adopt Mr. Koresh's theology and to become a convert or make excuses for him, but I think what you are saying is, it just points out that you needed some people who were somewhat familiar with what he was trying to say to get into his mind, as Mr. McClure has so well stated, and perhaps—I think you two folks have said it very well—we could have avoided these unnecessary deaths out there if we had perhaps done a better job of negotiating.

And I see my time is about up. Do you have a quick comment?

Dr. ARNOLD. Just a very quick one. It is not a matter of agreeing with him or believing his theology, it is a matter of discovering what he was trying to say, what the script was, reading ahead in the script, in the Book of Revelation, and then you would know what he was going to do next. That is what we tried to do; we tried to do that. Other experts could have done it too, but we just tried to do what we could.

Mr. BRYANT of Tennessee. Thank you.

Mr. ZELIFF. Your time has expired.

The Chair now yields to Mr. McCollum for 5 minutes.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman.

We are about to come to an end to this evening's long hearing, but I want to ask some questions that I don't think have been answered yet, and a couple of these I am going to ask to the Texas Rangers because there have been real clarification questions raised in some of these writings that have gone on about the events at Waco that need to be resolved.

Am I correct, Mr. Byrnes, that the Texas Rangers took statements from virtually all of the ATF agents who were involved in the raid or in the raid preparation as part of your investigation?

Mr. BYRNES. Yes, that is correct, Mr. McCollum. We started taking statements on March 2. Some of the agents were in the hospital we took statements from. We ended that on about, I believe, March 18, on Agent Kenny King who was the most severely wounded, you know, that fell off into the compound there. He was not able to be interviewed until then.

I believe there was a total of about 85 agents that were out there that we took the statements from.

Mr. MCCOLLUM. In any of those statements, did any of the ATF agents state that the shots that were fired first were fired by ATF agents, in their opinion, or an ATF agent?

Mr. BYRNES. No, sir, and I don't know if this came from the statement, but I think Agent Ballesteros stated at one time—and it may have been in the statement—that he initially thought it was the ATF dog team that was firing.

They had a group of people—there were a bunch of dogs that stayed at that compound, and they had people designated, if the dogs were going to attack them, to kill those dogs. So he stated and I think he testified to that yesterday.

Mr. MCCOLLUM. He did indeed. All I want to know is, did anybody say that? And nobody did, to your knowledge?

Mr. BYRNES. No, sir.

Mr. MCCOLLUM. What about with regard to firing from the helicopters? Did any of the ATF agents tell you that there had been any shots fired from the helicopters?

Mr. BYRNES. Quite to the contrary, we could find no evidence that there were ever any shots fired. Our best evidence is that they peeled off at about 300, 350 meters, because there was gunfire, and those pilots were not going to fly over that compound.

Mr. MCCOLLUM. And if indeed there were, as Mr. DeGuerin described to us today, bullet holes in the roof of that building that had to have come from above, did you ever find any evidence, any explanation, for why there would have been bullet holes and how

they could have come from above if they didn't come from the helicopters?

Mr. BYRNES. No, sir, I did not, and Mr. DeGuerin talked with me about that the night I met him.

Mr. MCCOLLUM. All right. Thank you.

Now I want to ask you about something very important to the FBI part of this and very important, in my opinion, to what ultimately happened. The hostage rescue team that the FBI had, according to their report, was getting very tired, they needed to go back if they continued this, and we didn't have the assault that occurred and have some training and regrouping, and although there were some questions about it—it appears pretty clear they were—and there was some consideration to doing that, but in the process of that consideration they seemed to have—and, again, we haven't heard the testimony, but just reading the text of this—seem to have decided that they couldn't really do that because they didn't trust SWAT teams or anybody else to be able to maintain the perimeter around the compound.

They said they just didn't have a force, they didn't have the right under the law, the posse comitatus law, to have the military do it, and they didn't have confidence that they could get any SWAT teams that could do their job, just maintaining the perimeter and keeping people from coming out, and so forth, or going in.

In your opinion, knowing the Texas officers, you all don't have SWAT teams, do you, the Texas Rangers, but the State police do, don't they?

Mr. BYRNES. Yes, they have a SWAT team.

Mr. MCCOLLUM. Either the State police or the local officials in the area, were there SWAT teams or combinations thereof that could have been put together from State law enforcement or local law enforcement that could have maintained that perimeter for a few days or a week or two, if necessary, to let this FBI hostage team regroup had the negotiations continued for another month or something?

Mr. BYRNES. Well, to answer your question, just generically, yes. Frankly, I don't know. And let me say that the HRT team, in my opinion, is probably the most highly trained unit for what they are doing in the world, and I think they were the people to be there.

Mr. MCCOLLUM. I don't doubt that for a minute. I am not even questioning that, I am just asking because I know you may not know all of this, but we have looked into it, and it appears that that is a factor. We are going to hear more from them.

Mr. BYRNES. I never heard that before.

Mr. MCCOLLUM. Whether it is or not, the question I was really asking, just because you are here tonight, you believe that, at least from the standpoint of holding the perimeter—and I would ask that to you as well, Captain Cook—that State police or SWAT teams from local police units could have been mustered if you had been asked and consulted with to do that, even though they wouldn't have been as effective at it perhaps as the FBI's HRT team. Is that right or not?

Mr. COOK. I think it could have been accomplished. I think that is just a basic law enforcement trait, No. 1. We have police officers trained in different areas.

Mr. McCOLLUM. Thank you very much.

Child abuse: We have heard a lot up here today about child abuse, and this past week, local law enforcement, that is their problem, Captain Byrnes, it was not a Federal law that was violated.

I have heard some of my colleagues say, and I have even heard some officials downtown this past week say, because of all the child abuse in there the ATF needed to go in and do its thing. In your opinion, if it were just child abuse, the guns weren't involved, couldn't the Texas Rangers have taken care of that?

Mr. BYRNES. I would hope we could, yes. We work child abuse cases.

Mr. McCOLLUM. Thank you.

Now I have got to ask Dr. Tabor a question.

Dr. Tabor, you have said several times this evening that you have positive reasons why you believed affirmatively that the negotiations on the 14th would have succeeded where you were absolutely convinced they would, and you needed about 5 minutes to tell us, and you said you are sure you are going to be asked to do that sometime.

Well, forget that light over there. Once I have asked the question, you can take the 5 minutes. If I weren't going to do it, that is what Mr. Zeliff is going to do. Mr. Blute is going to yield, we have the last of the time here, so forget that light and just tell us what those positive reasons were.

Dr. TABOR. Thank you.

It has to do with what Dr. Arnold referred to as the script. Let's call it an apocalyptic scenario, and it is essentially built around David's system of how the end of the age comes. Many apocalyptic groups have such events, they are ordered sequences of events, and David had his.

So the question—we became rather concerned when we found out early on Arnold talking to Tom Murphy, FBI agent, he thinks he is in the Fifth Seal.

Now, the Fifth Seal says that a number of the group would be killed and then you wait until the rest are killed. Now, that is in the Bible.

At some point in history, if you take the Bible literally, there will be some sort of martyrdom of the people of God. Various other ways to interpret it, but that would be the literal interpretation.

This terrified us and I think the FBI as well, because obviously if he thinks he is in the Fifth Seal, what are you waiting on? Until the rest will be killed.

This was the scenario Mrs. Thurman was referring to that various people that have left the group have talked about, that some day at the end there will be this final period of martyrdom.

What is after the Fifth Seal? The Sixth Seal, and it might as well be the Seventh because it is over at that point. That is what everybody refers to properly as the end of the world, the judgment.

Now, what we presented to Koresh—and the legal work had to be done first because he had legal concerns as well, but once the legal things were done and the exit plan was worked out—literally who would go out first, second, third, how it would be handled—

the question then was, as we presented to him, was to separate the man from the message. Every prophet wants to be heard.

We said, "David, you are on the cover of Time, Newsweek, People; you are mentioned hourly on CNN, every night on the news, whatever day it is. But what do we know about you? You claim to be the messenger to the world. What is it that you are saying? We don't know anything you are saying."

In the Book of Revelation the key passage that I think got through to him is in chapter 10 where it says that this messenger that he claims to be is not to write the message. He can present it one on one, like he tried to do to Rodriguez, all those other people. It says, "Write it not," but at the end of the chapter it says, "He will go forth and write it," and so what we suggested to him—I think he goes for it in the letter—if you look at the letter carefully, there is a little bit of what we would call, I think, nonsense in it about earthquakes.

I don't know how many people believe David can cause an earthquake, but look at what he says over and over. Here is what comes out consistently. You can—"I am going to come out, and you can deal with the bizarrity of me in the flesh. I will answer any and all questions before man."

He says this three or four times, exactly what, not that we had caused it, we had simply tried to convince him that this was not the Fifth Seal, it is not the time. This is the time.

And the FBI, by the way, had also tried to say this is the time for your message to go forth.

What he felt, I think, was that, with this manuscript, the fact that 2 scholars at universities with Ph.D.'s had said, "David, we will look at it," he kept saying, "We are not a bunch of idiots; I do have a doctrine; I have got something to say."

We, in effect, said, "Fine, what is it? We will read it. Not only will we read it, the press will be saying when you bring it out, well, what did that guy teach anyway?" You see, that was the positive motivation.

Now, he would have to face the court, that is the negative, but Mr. DeGuerin had convinced him, I think—true or not, I don't know—that there was a good case, not about child molesting or anything, that hadn't even been brought up legally, but what happened on the 28th, that the Davidians had a good case that they had acted in self-defense, so that would come out positively. In the meantime, his message would go out.

And so what he became convinced of, he still believed that some day there would be a group of martyrs at the end, which many fundamentalist Christians believe—in fact, most fundamentalist Christians believe—but he could see that this was not the time, but he wasn't sure; that is why he was waiting. He was waiting to see and to determine in his own mind and however he got his revelations at the time.

Now, what happens on the 19th: Now he sits down to write. And we have interviewed his typist; that is Ruth Riddle. On Sunday night she is typing the manuscript. Why? Because the FBI said, well, we have to wait a week, 2 weeks. You look at the transcript we gave you.

He says, "I am out of here; I am so tired of eating MRE's;" you get these quotes; he says, "Lock, stock, and barrel it; it is clarified; I am splitting this place." At the very end he says, "Yes, yes, yes, I am coming out. I never intend to die in here." Now, that is literally 2 days before the fire.

So what happens on the 19th, in his religious mind, you have got to understand what you are dealing with here. When tanks come in, inserting the gas and saying—which should never have been said—"Vernon, you are not the Messiah, your 15 minutes of fame are over, come out and surrender to proper authority," that is that attack of the beast, you see.

In other words, what his mind is saying, I think, at this point—and this is not psychoanalyzing him, it is common sense—obviously you don't write a manuscript and get your message to the world. God must want to bring out of this after all the martyrdom.

In other words, we are in that time, we are in that tragic time where we will die, and we must have been in the fifth seal after all.

And so the FBI inadvertently—I don't think they intended to do this—confirmed him in the previous view: Remember that some day I will be attacked. He is attacked on the 28th, and then the 19th they will come in with gas and tanks, and somebody mentioned the prophecies he had read about chariots of fire surrounding and so forth. It fulfilled the scenario.

Now the other alternative would be come out, answer any and all questions. The message is what was key to him. I think he thought that we would be, when we read it—as he said to the negotiator, it will blow your socks off.

Well, you got chapter one. It is in the back of my book. It is pretty hard to understand, frankly. We give a little commentary to help. I would say it is respectable exegesis, given his view. It could have been discussed. We didn't get the other six chapters, so I guess we will never know. But this was his logic. So it fits. His own self-interest to come out and the group's self-interest and the tapes show that they were buoyant over it and happy and excited that they were finally coming out.

That is when—that lasted until Sunday at 2 o'clock when they began moving the cars out front, and he got very upset, and these are the last words basically of Koresh: He said, "I am going to write it or I am not; it is up to you."

Now, what he meant there was: If you act as Babylon against me, then I guess the end is near. It is up to you. Are you the people who bring the end or not? Or I will write it, if you want to hear my message. This was his own view, as Arnold said a couple times, it is not my view, it is certainly not his view, but it was Koresh's view and certainly the view of the ones inside.

So, you know, one way to trivialize it and say, well, was it worth waiting 10 days for the lives of those kids? that is kind of a silly way to put it, and that is not how I would put it. I don't know how long I would have waited, but certainly when the legal written agreement, the evidence of the negotiators—and they were encouraging him; they were saying, well, you need to get back to that, you see, because you are coming out. They were saying things like, "I

am anxious to read it." He was under the impression that it was, as we say, a done deal and it fit finally.

The alternative scenario is that we are not in the end of the world, what foolishness; there are lots of things, we said to him, think of all the things ahead, and there is a future—in other words, lots of things to be talked about, lots of things to be done. I think that had a great appeal to him.

Mr. MCCOLLUM. Thank you very much.

Thank you, Mr. Chairman.

Dr. TABOR. Sorry, it was probably more than 5 minutes.

Mr. ZELIFF. Well, it was, but we thank you for your testimony, both of you. And the Texas Rangers, we thank you as well.

I just had one troubling thing, both Captain Cook and Captain Byrnes—oh, I am sorry, I need to yield to Mr. Blute, my good friend from Massachusetts, for 5 minutes.

Mr. BLUTE. Thank you very much, Mr. Chairman.

I would just like to thank this panel. I think it has been very informative. I think these hearings have been very informative for the American people.

At this time I would yield the balance of my time to Chairman Zeliff.

Mr. ZELIFF. Thank you.

The thing that is troubling to me is that we talked about Sarabyn and Chojnacki, and you said that they lied, and we certainly heard the testimony yesterday. And the problem that a lot of us have with this is that we had this tragedy: Over 80 folks were killed, Americans, a lot of mistakes were made, everybody admitted mistakes, and nobody paid the price, nobody was held accountable, nobody was responsible. These two gentlemen were fired, and then rehired, and we still don't know a lot of the details about the rehiring.

If this situation had developed at Waco and was turned over to the Texas Rangers, not only the child abuse—there apparently wasn't a drug connection so we will assume that at least—and you only had to deal with the weapons and the child abuse, and there was a complaint, how would you have done it differently?

Mr. COOK. Well, I think we were posed that question earlier, maybe in a little different format.

It is difficult to say that we would have gone and knocked on the door like so many people think that that is the way the Texas Rangers would handle it. I want to tell you, our resources are not what ATF are.

But I think probably what we would have done is, if that information came to us, quite honestly, we would have gone to ATF for assistance, we would have gone, but I think at that point it would have been a joint operation as opposed to a single operation.

Mr. ZELIFF. How about the 51-day siege and then the ultimate decision to use gas and the quantities that were used? Would you have made that decision?

Mr. COOK. Well, there again, you all probably have more information than we do in regard to the conversations on the T–3 tapes and so forth with regard to what was going on in there.

I would like to think that we would have, I don't know, we would have continued on with the siege. Whether we would have ended

the siege, at some point in time it had to end. I don't believe there was any doubt that at some point in time, and I have heard just comments that we should have just built a fence around it and put pickets and left them there in a penitentiary, so to speak.

Mr. ZELIFF. Not a bad idea, is it, in retrospect?

Mr. COOK. Well, in retrospect, because we would still have the lives alive, but we could not allow or continue to allow, from our perspective, a continuing criminal offense which, if we sincerely felt—and we do—that there was sexual abuse going on, and so forth, it is pretty hard to allow that offense to continue in our presence.

So at some point in time we would have had to end it. I don't know if it would have been that day. I am not going to sit here and tell you it would have been that day. I would like to think that through the use of Dick DeGuerin, my rapport, our rapport, we might could have established——

Mr. ZELIFF. Might have worked it out in just a few more days, extra harder?

Mr. COOK. I am going to tell you that it is still hard to second-guess the Bureau and say they acted improperly. But I am just saying, you know, when you write a letter, if I write a letter and I reread it and I am going to tear it up and write it again.

Mr. ZELIFF. Let me ask you this, and I would like Captain Byrnes to comment also. You have two of your Texas Rangers. If they lied and you fired them, would you rehire them, and under what basis?

Mr. COOK. Well, we don't have the same latitude or the same rules the Federal Government had, and I have heard the testimony about being reinstated, and I certainly appreciate the management standpoint in bringing them back in a noncommission for fear that they would come back in a commission spot or in a gun-carrying spot, and it sounded like, to me, from the testimony, that that is the reason for the cave-in, was to make certain that that wouldn't happen. I would like to think that we can fire Texas Rangers for lying.

Mr. ZELIFF. Lying is a pretty good reason for getting rid of people, isn't it?

Mr. COOK. Certainly it is, and, you know, our integrity level is much above the lies.

Mr. ZELIFF. Would you have gone further than that? Would there be any kind of criminal penalty or charges, based on what you know?

Mr. COOK. As a policy, we pursue the criminal charges on our own personnel at the same pace that we would on anyone else. We don't feel like our people are exempt from criminal charges, which is what we suggested in this case.

In regard to this, Captain Byrnes has testified that we recommended criminal charges be filed. That is no different than if we were working any other criminal case, whether it be on our own people or not, and I can tell you a personal situation, but I would rather not because it does involve our people, but recently we had to make that decision, and we made that decision.

Mr. ZELIFF. So you believe in accountability?

Mr. COOK. Certainly do.

Mr. ZELIFF. At some point, blame has to stop, it has to go someplace, doesn't it?

Mr. COOK. It does.

Mr. ZELIFF. The only other question that I would ask you regards your meeting with Ron Noble the week before last, I believe, and I am curious, what was your discussion with him relative to this case? And anything you would like to add.

Mr. COOK. Mr. Zeliff, I have to say this with a smile, because we met not only with Mr. Noble but we met with congressional staff, and it was really funny, Mr. Noble was not as inquisitive, but it seemed like every time we met with the group they would say, "What did they say? What did the other side say?"

Mr. ZELIFF. Nobody trusted anybody.

Mr. COOK. I am not going to make that distinction, but I can tell you, that is exactly the same comments we were getting: What did they say?

I think Mr. Noble is an honorable person that is trying—that we found to be honorable with us. I can judge him only the way he treats me personally, the way he treated the Texas Rangers, and our personal interaction, and that is what I am telling you. The way I feel is that he has treated us professionally and has never, never attempted to circumvent or change our testimony one way or the other.

Mr. ZELIFF. I didn't imply that.

The only last thing I would like to say—Mr. Magaw last night ended up in probably the same place that you might want to end up. We just are very appreciative that you came all the way from Texas to join us here to be part of what we are trying to do in terms of seeking the truth, and his indication was that this is good for the ATF, these hearings, that we would hopefully get to the bottom of it, that if there are any problems that need to be corrected, that they could be corrected and in the end would add an awful lot of credibility to law enforcement, not only State, but local and Federal as well.

Any comments you would like to add?

Mr. COOK. I think it would be our goal. We don't like to air our differences in public, but since we have, then we would like for all the good that can come out of this in order to make law enforcement better, and, as it was stated from the committee, that we would like, if there is a problem with credibility with the American public, then we would like to be a part of reestablishing that, and that would be our goal here, is to say that law enforcement is committed to doing the right thing. I really believe that.

I think at the Federal level, I know we have had some harsh words for the FBI in this. We have told the truth, we have been honest with you, and I guess that is where I would like to end, to say we have tried to be totally honest.

Mr. ZELIFF. A good place to end it. We thank you very much and ask, in any way possible, did anybody here trash or hurt or demean law enforcement?

Mr. COOK. You certainly have not hurt us, and from our testimony or from our hearing of the committee I have not seen anything.

I think sometimes you have to get honest with one another and sometimes you have to disagree with one another, and I certainly—if I disagree with one of you or you disagree with me, I hope that I am in a position to state my case and still come out with the ultimate objective of getting to the truth.

Mr. ZELIFF. Thank you very much. I would like to thank all the witnesses.

Mr. BUYER. I have a point of procedure.

There has been a lot of discussion today and references to the signed document that Dr. Tabor has. I would ask unanimous consent that that signed agreement be submitted for the record.

Mr. ZELIFF. Without objection, so ordered.

Dr. TABOR. It is included in our opening statements and also in Dick DeGuerin's, so it is probably already in there, but it wouldn't hurt to put another copy in.

[See p. 124.]

Ms. JACKSON LEE. I have a similar inquiry, Mr. Chairman. There have been several references to tapes, and I know one was admitted, but I heard "tapes," plural. Do we have those tapes?

Mr. ZELIFF. The tapes relative to the last 5 days referred to, do we have those submitted as evidence?

Dr. TABOR. We have. Several of you have gotten the actual cassette, I believe.

Mr. ZELIFF. I personally would like to have those tapes.

Dr. ARNOLD. I was going to say——

Dr. TABOR. The transcript we have given you.

Dr. ARNOLD. I was going to say that I have made copies of tapes, I think there were three, and you should be receiving those either tonight or tomorrow, and there is one tape, that is called Key Excerpts, that you can hear the women and children talking about why they are there during the 51 days.

Mr. ZELIFF. Why doesn't anybody on either side——

Dr. ARNOLD. Please listen to it.

Mr. ZELIFF. Let us know through your leadership who wants copies, and we will see that they are duplicated, if that is OK.

Dr. ARNOLD. We have the key excerpts duplicated already. I can hand it to you right now on the way out.

Mr. ZELIFF. Great. We will stop down and pick them up.

[The prepared statements of Drs. Arnold and Tabor follow:]

PREPARED STATEMENT OF J. PHILLIP ARNOLD, PH.D., REUNION INSTITUTE, HOUSTON, TX

J. Phillip Arnold, Ph.D.

The Branch Davidians held religious beliefs which were crucial to their decision-making process. Understanding these complex ideas was a prerequisite for any effective negotiations and peaceful resolution of the crisis. The fact that religious beliefs were crucial to the Branch Davidians does not mean that these beliefs or conduct were good, bad, moral or immoral. It simply recognizes that a religious dynamic operated within the Branch Davidian community as the focus of ultimate concern around which their decisions were based. To ignore or downplay this factor was to invite disaster.

Since these beliefs determined the behavior, conduct, and actions of the Branch Davidians, an accurate understanding of these complex ideas was an absolute prerequisite for effective negotiations and for a peaceful resolution of the crisis. Such knowledge also would have helped law enforcement avoid taking steps which would precipitate a catastrophe.

Given these facts, it is startling to discover that the Branch Davidian belief system was not effectively researched, understood and factored into the negotiation strategies. Compounding this problem, some law-enforcement decision-makers were convinced that David Koresh and the Branch Davidians were "conning" the authorities -- using religion as a mask for their lawlessness.

My research has not identified one person in law-enforcement who seriously studied David Koresh and Branch Davidian beliefs in order to comprehend exactly what David Koresh's teachings were regarding the reason for the delay in surrendering and how the stand-off could be resolved. Yet this knowledge was available to law-enforcement from the very beginning from sources who were ready and willing to help -- but they were not successfully utilized. These sources included Branch Davidian members not in residence at Mt. Carmel, former members, and Branch Davidians inside Mt. Carmel, especially Steve Schneider and David Koresh who spent hundreds of hours on the telephone with law-enforcement attempting to explain that their actions and decisions were a

direct result of very specific beliefs based on biblical passages. Religion experts were also available from the American Academy of Religion.

Why should law-enforcement have given close attention to their religious discussions with David Koresh and Steve Schneider? The reason is that these telephone discussions of their beliefs explained exactly why there was a stand-off and how that stand-off could be resolved. The discussion of their religious beliefs also clarified what type of action by law-enforcement would be productive and what would precipitate disaster. The religious teachings of David Koresh and the Branch Davidians dealt with very concrete and specific items such as the ATF raid on February 28th, the presence of tanks outside their building, the display of their Branch Davidian flag, the storage of "munitions", the use of "kosher" food during the stand-off, the role and function of their children, the length of time that the stand-off would last, and very importantly how the crisis could be settled peacefully. In other words, the Branch Davidians believed that there were very specific religious reasons on which their behavior was based.

The newly released negotiation tapes conclusively show that David Koresh painstakingly explained these subjects in careful, laborious detail for many hours to each negotiator in turn. He took them through many difficult passages from the Bible. Although some of the negotiators tried to follow along, they always got lost in the details of a very complicated and complex tapestry of biblical references -- all of which explained why the stand-off was occurring and how to resolve it. Even though David Koresh and Steve Schneider tried to explain why their religious faith necessitated that they wait inside their sacred center at Mt. Carmel for a while longer, their ideas sounded like "Bible babble" to agents untrained in such complex biblical studies.

If the Branch Davidians would have been from a different culture, speaking a foreign language, or interspersing words from another language in their dialogue, surely the FBI would have brought in someone fluent in the language and educated in the cultural context which was being used. This is precisely the model for the situation with the Davidians. However, no qualified translators were integrated into the negotiation process to help interpret the language and context of the Davidian dialogue.

Their teachings were capable of being explained by persons familiar with the religious teachings of churches rooted in an Adventist heritage. Since such people were available to law-enforcement and given that the stakes were so high at Waco, it would have been prudent to consult experts in religion who could offer their opinion as to whether David Koresh really had a religious system in which he believed or whether he was "winging it" as he went along. (For example, some law-enforcement officials have stated that since David Koresh had to count and re-count Passover in order to know when to observe it in April 1993, it shows that he was "making up" his religion as he went along. This kind of accusation betrays an ignorance which could have been quickly cleared up by an expert in religious calendars -- who would have shown that the counting of Passover (and Easter) has been a difficult and controversial problem in the history of Judaism and Christianity.)

Although I had contact with the FBI in March of 1993, I was never truly consulted about my opinion, suggestions or advice. Nor was I permitted any data -- transcripts or tapes of

negotiations with David Koresh -- to study and evaluate. Two audio tapes of my discussing the "Seven Seals" were sent into David Koresh by the FBI. These tapes were non-confrontational discussions which granted David Koresh many of his presuppositions about biblical prophecy and his role in it, while drawing his attention to biblical passages capable of convincing him that peaceful surrender was predicted of him. Koresh appears to have accepted these suggestions since his surrender letter of April 14th incorporates references to suggestions found on the audio tape of April 1st made by Dr. James Tabor and me and delivered by attorneys to David Koresh on April 4th.

How was the FBI to know whom to consult out of the hundreds of volunteers who offered their help? A good place to start would have been contacting the American Academy of Religion which serves as the professional organization for experts in religion. Also, negotiation tapes #129 and #130 for March 15th and 16th prove that the Branch Davidians believed phone contact with me or other experts probably would resolve the crisis and bring them "out of here". Since the Branch Davidians had heard a radio program on which I was a guest, they singled me out as a representative of the scholarly community with which they wanted to dialogue. Their request for phone contact with religion experts was denied even though Schneider insisted it could end the stand-off! In retrospect, the negotiation tapes -- now available -- prove that the necessary data were available to end the crisis peacefully -- all that was missing was the expertise to understand and meaningfully dialogue with David Koresh and the Branch Davidians in their language.

Why were qualified religion experts not given full access to transcripts or tapes of telephone negotiations with David Koresh to study his belief-system? This neglect prevented a serious evaluation of his religious beliefs necessary for understanding <u>why</u> they were waiting, <u>what</u> they were waiting for, <u>how</u> to speed up the process and <u>how</u> to recognize when the waiting period was over. For this very reason, the crucial importance of the surrender letter of April 14th was entirely missed by law-enforcement. That letter shows that David Koresh had found his own reasons for surrendering which were consistent with his Branch Davidian religious world-view. The way out had been found, but was not recognized by law-enforcement oblivious to the religious dynamics. Hence, Attorney General Janet Reno was not informed that the April 14th letter signified that the long wait was almost over. Instead, the very worst possible action -- given the religious dynamics -- was undertaken on April 19th, with predictable results.

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Background

July 19, 1995

From: J. Phillip Arnold, Ph.D.

My involvement with the Waco Crisis originated from my academic studies and personal vocation.

My Ph.D. from Rice University is in Religious Studies with a focus on apocalypticism in Jewish and Christian history. I also have an M.A. in American history from the University of Houston with an emphasis on the origins of separation of church and state. In 1980 I founded Reunion as a non-profit "think-tank" dedicated to research and education in religion, philosophy, history, and archaeology, as well as an information source on "new religions" in America.

On Saturday March 6th, I traveled from Houston to Waco to volunteer my expertise to the FBI. At the press conference, I approached agent Ricks at least three times in an effort to explain why I could be of help. He hurriedly took my information pack and expressed little interest. I then drove to the FBI command post and introduced myself to an agent who promised to pass my name on to the persons in charge.

About March 10th, FBI agent Tom Murphy phoned me in Houston and asked if I would be willing to help if negotiations continued to falter. I responded by returning that week to Waco and continued to talk with agent Murphy by phone, eliciting as much specific information on David Koresh's prophetic schema as possible in order to ascertain David's next move and to determine how he should or should not be treated. Agent Murphy informed me that my expertise would not be needed since things had improved and some Branch Davidians were scheduled to exit Mt. Carmel that Friday. He said he would stay in touch.

About March 15th I was interviewed by two Dallas radio stations about David Koresh's interpretation of biblical prophecy. That afternoon the FBI called and said that the Branch Davidians had heard the program and were very positive toward me. The agents copied my radio interview and sent it to the Davidians. (Subsequently, we know from negotiation tapes #129 and #130 that Steve Schneider pleaded with the FBI to let me speak directly to them in order to resolve the crises. Permission was denied.) I never heard back from the FBI -- although I called them at least two more times.

On April 1st, my colleague, Dr. James Tabor at the University of North Carolina at Charlotte, and I initiated a live discussion on a Dallas radio station to which the

Branch Davidians inside Mt. Carmel listened every day. We designed this program to speak to the Branch Davidians in religious language they could understand and to gain their trust while inspiring David Koresh to discover a "biblical" pathway to surrender and exit Mr. Carmel safely. Our methodology did not criticize David Koresh's religious presuppositions and interpretations, but moved him on to new possibilities consistent with his current beliefs. (The radio host, Ron Engleman, informed us that he had discussed the idea with his FBI contact and we were to proceed with the radio program.)

On April 4th, Attorney Dick DeGuerin gave an audio copy of this program to David Koresh. Negotiation tapes show that he and others heard the program and were positive toward us -- again requesting contact with those who would understand their beliefs and conduct.

After Passover week on April 14th, David Koresh wrote that he had received his long-awaited guidance from God who now instructed him to surrender to law-enforcement after writing out his explanation of his message. This April 14th letter resonates with several ideas that Dr. Tabor and I brought to David's mind in the April 1st radio program. Dr. Tabor and I were elated -- the stand-off was on the verge of ending. David Koresh had found religious reasons for ending his waiting period. (Negotiation tape #85, 3-7-93, shows that David Koresh was waiting for this special instruction from early March.)

By Monday morning April 19th David Koresh had completed one of the seven sections of his essay and was into the second (see negotiation tapes from 4-15-93 through 4-18-93). When the tanks inserted gas, David Koresh interpreted it as the world impatiently rejecting a crucial revelation from the Bible. He could not come out because his religious views were that he was to obey God's command to remain within Mr. Carmel until the message was written en toto.

After the catastrophe of the 19th, I appeared on Ted Koppel's Nightline with FBI agent Jeff Jamar who explicitly stated that the FBI had irrefutable evidence that David Koresh was not actually writing the seals. But he did not offer any evidence. Unknown to me at that date was the soon-to-emerge fact that Branch Davidian survivor Ruth Riddle emerged from the fire with the disk which contained the entire first chapter with a preface and an introduction written by David Koresh.

Subsequent studies of the David Koresh manuscript indicate that he would have completed the entire essay in about two weeks. Internal evidence suggests that he would have led the people out soon thereafter.

In order to prevent such a tragedy from occurring again, I founded the Religion-Crisis Task Force in late 1993 which consists of leading experts on religion and social sciences from major universities who are willing to offer their expertise to law-enforcement and the media when another Waco arises. On May 10, 1994 we wrote Attorney General Janet Reno. On June 10, 1994 we received a reply from Charles E. Mandigo of the FBI acknowledging our letter of May 10th, 1994. In November 1994 I phoned Special Agent Stephen Etter of the FBI and was told that when and if we were wanted we would be contacted.

J. Phillip Arnold, Ph.D.

April 14, 1993

Hello Dick,

As far as our progress is concerned, here is where we stand: I have related two messages, from God, to the F.B.I.; one of which concerns present danger to people here in Waco.

I was shown a fault line running throughout the Lake Waco area. An angel is standing in charge of this event. Many people, here in Waco, know that we are a good people, and yet, they have shown the same resentful spirit of indifference to our "warnings of love."

I am presently being permitted to document, in structured form, the decoded messages of the Seven Seals. Upon the completion of this task, I will be freed of my "waiting period." I hope to finish this as soon as possible and to stand before man to answer any and all questions regarding my actions.

This written Revelation of the Seven Seals will not be sold, but is to be available to all who wish to know the Truth. The Four Angels of Revelation 7 are here, now ready to punish foolish mankind; but, the writing of these Seals will cause the winds of God's wrath to be held back a little longer.

I have been praying so long for this opportunity; to put the Seals in written form. Speaking the Truth seems to have very little effect on man.

I was shown that as soon as I am given over into the hands of man, I will be made a spectacle of, and people will not be concerned about the truth of God, but just the bizarrity of me - the flesh (person).

I want the people of this generation to be saved. I am working night and day to complete my final work of the writing out of "these Seals."

I thank my Father, He has finally granted me the chance to do this. It will bring New Light and hope for many and they will not have to deal with me the person.

The earthquake in Waco is something not to be taken lightly. It will probably be "the thing" needed to shake some sense into the people. Remember, Dick, the warning came first and I fear that the F.B.I. is going to suppress this information. It may be left up to you.

I will demand the first manuscript of the Seals be given to you. Many scholars and religious leaders will wish to have copies for examination. I will keep a copy with me. As soon as I can see that people, like Jim Tabor and Phil Arnold have a copy I will come out and then you can do your thing with this Beast.

I hope to keep in touch with you by letter, so please give your address.

We are standing on the threshold of Great events! The Seven Seals, in written form are the most sacred information ever!

David Koresh

David Koresh

Chapter 5

The Davidian Dilemma—To Obey God or Man?

J. Phillip Arnold

For fifty-one days the Branch Davidians waited inside their religious center at Mt. Carmel, refusing to obey federal authorities who demanded their immediate surrender. Why did nearly one hundred members of this Judeo-Christian religious community volunteer to remain inside Mt. Carmel despite the fact that massive firepower was arrayed against them and their messiah David Koresh?[1]

Americans apparently have no problem understanding why a few hundred men went to their deaths in 1836 in a standoff with government authorities at another Texas religious center south of Mt. Carmel at the Alamo mission in San Antonio. In fact, the Alamo defenders are remembered as American martyrs who sacrificed their lives for freedom from a foreign foe. But moderns do not understand or admire the Davidians for refusing to surrender to authorities. After all, the Davidians certainly made no claims to represent the nation-state, and the authorities surrounding Mt. Carmel were not stereotypical "evil foreigners."

Although the Davidians thought that they were defending individual liberty and freedom of religion, this was not the major reason *why* they refused to come out, go to trial, and continue their religious mission from prison if convicted. The question remains why nearly one hundred people

adamantly refused to exit their religious center at Mt. Carmel and acquiesce to the demands of the American government.

The Branch Davidians knew full well why it was impossible for them to comply with the authorities' demand to exit Mt. Carmel. Their resistance had nothing to do with their guilt or innocence. It had everything to do with their belief in God. The Davidians believed that *God* had commanded them to remain inside the center until God permitted them to leave the building. Obedience to God was more important to them than submission to human authority—when the two were in conflict, God was to be obeyed.

Federal authorities and the media failed to take seriously the crucial importance of Davidian religious faith. By not factoring in the determinative role that religious faith played for the Davidians, federal negotiations with the group were doomed from the start. Instead of expressing profound insight into the importance of Davidian faith, the authorities and the media constantly demeaned the Davidians by reducing them to "cultists," "con men," "zombies," and victims of "brain-washing." These pejorative and value-laden concepts prevented any crisis-resolving communication to develop between the negotiators and the Davidians.

The inability to understand and relate to the religious beliefs of the Davidians illustrates an abysmal lack of understanding of the phenomenon of religious faith. The absence of empathetic knowledge about this dimension of human experience severely crippled any chance for a peaceful resolution of this crisis and will continue to frustrate the efforts of authorities in future crises as we near the year 2000.

But it is not enough to grant the fact that the Davidians possessed deeply held religious beliefs which determined their decision-making. We also must enquire as to what was the specific *content* of their religion which necessitated—in their minds—their refusal to exit Mt. Carmel. What caused them to conclude that God wanted them inside and *not* outside Mt. Carmel?

The Davidian belief that it was against God's will for them to exit Mt. Carmel was based on prophetic scripture, especially the fifth seal of the Book of Revelation. It is crucial to grasp the fact that the Branch Davidians are a people of the text. For them the words of the Bible are the authoritative revelation of God directed primarily to God's remnant people living at the "end time." Although Koresh was believed to be an inspired prophet figure, even his revelations had to have a basis in the text of scripture. Using the ancient Jewish *pesher* method of interpretation, the Davidians saw the fulfillment of specific biblical prophecies in their particular group at Mt. Carmel—much like the Essenes found scriptural prophecies fulfilled in their community at Qumran.[2]

It is important to realize that for several years Koresh had preached that the "seven seals" of the Book of Revelation were in the process of being fulfilled. That is why the Davidians expectantly awaited the unveiling and

fulfillment of each seal in order. They came to believe that the first seal was fulfilled in 1985 when their prophet David Koresh became the white-horse rider of Revelation 6:2. About this time Koresh began to expound the seals, using the prophetic writings of the Bible and the Psalms of David as the primary hermeneutical key.[3] After the fulfillment of the first seal the Davidian community awaited the opening of the second seal. Specific events in the life of the community soon convinced them that the second seal was coming to pass. Confirmed in their faith and inspired by these wondrous fulfillments, the Davidians eagerly awaited in faith the opening and closing of the remaining seals. Within a few years it seemed to them that seals three and four had been fulfilled by important events which took place between 1985 and 1992.[4] The entire church now confidently awaited the catastrophic fifth seal which would precede the direct intervention of God in seals six and seven.

The fifth seal is catastrophic because it clearly predicts the violent deaths of the faithful people of God in the end time. The text in Revelation 6:9-11 states:

> And when he had opened the fifth seal, I saw under the altar the souls of *them that were slain* for the word of God, and for the testimony which they held: And they cried with a loud voice, saying, *How long*, O Lord, holy and true, dost thou not judge and avenge our blood on them that dwell on the earth? And white robes were given unto every one of them; and it was said unto them, that they should *rest* yet for a little season, until their fellow-servants also and their brethren, that should be *killed* as they were, should be fulfilled.

It is crucial to note that the slaying of God's people predicted in the fifth seal occurs in *two phases*. In the first phase only some of the people are to be slain by their enemies. The remainder of God's people are to be slain after a special *waiting* period which lasts for a "little season." Only after these two killing sprees will God directly aid the people by divine intervention as described in seals six and seven. The Davidians believed that this passage commanded the survivors of the first killing episode to patiently await God's supernatural intervention which would occur after a "little season" of waiting. This means that after the fulfillment of the first four seals the Davidians were expecting the opening of the fifth seal which, in their view, predicted that they would be slain by enemies in *two* separate attacks. But they did not know exactly when these tragic events would transpire. Soon, but how soon?

Time was shorter than they thought. When the Davidian community saw the ATF approach them in force on February 28, 1993, the Davidians believed that the moment had come for the dreaded fifth seal to open. That

is why Koresh could say that he had known that the government was coming long before the ATF had known. From the Davidian viewpoint, the ATF began shooting at the people of God—killing a number of them. The actual killing of a number of their members confirmed for the Davidians that Revelation 6:9 was fulfilled on Sunday morning February 28. They concluded that phase one of the fifth seal, which predicted the first killing spree, had been fulfilled.

What were they to do? They were driven to the text for direction. Revelation 6:11 informed them that God would intervene in apocalyptic fury to avenge the slaying of the remnant people very soon. God's instructions urged patience and spoke of a short waiting period—a "little season." After this brief period the remainder of the people of God would be killed.[5] The Davidians believed that this interpretation was confirmed by Isaiah 26:20 which commanded the people of God to "enter thou into thy chambers, and shut thy doors about thee: hide thyself as it were for a little moment [a "little season"], until the indignation be overpast." In obedience to their understanding of the text the Davidians did exactly that—for fifty-one days they waited because God told them to in Revelation 6:11! For them it was a matter of conscience—of faithful obedience to God's word. From the Davidian point of view the truth of God was non-negotiable.

Confronted by such religious faith, the authorities found it difficult to negotiate with the Davidians. But had negotiators fully understood the importance of the biblical text to the Davidians, they may have convinced them to leave Mt. Carmel. The Davidians would have exited the center had they been convinced from scripture that God wanted them to leave. In April, the authorities came close to doing just that.

On Sunday, April 4th, they permitted the Davidians to have an audio tape made by Dr. James Tabor and me which spoke to Koresh in biblical language he could understand. We argued from scripture that the "waiting period" was much longer than the "little season" of less than three months which he had expected. The second phase of the fifth seal could be years away. We offered biblical reasons for the possibility that the "waiting period" included time for him to have a trial and to continue his ministry worldwide. Granting his presuppositions for the moment, we pointed him to Revelation 10:11, which "predicted" that "he" had *another* prophetic mission *yet* to be fulfilled. He must "prophesy *again*" to many nations. After hearing our suggestions during Passover week, Koresh decided to lead his people out from Mt. Carmel and let the system do what it would to him. For the first time he confirmed in writing that he had finally received the long-awaited authorization from God to leave the center.[6] But first he must write his interpretation of the seven seals for the world to read—perhaps the "little book" of Revelation 10:8-10. If the world would wait for this written

revelation, it would prove itself worthy and could be spared the catastrophes prophesied in the seals.

But on the morning of April 19, with the tanks knocking on his door and dangerous CS gas spreading throughout Mt. Carmel, Koresh became convinced that his original time-table for the fifth seal was correct and that Tabor and Arnold were wrong. It was evident to him that the world was rejecting the seals and that phase two of the fifth seal was now crashing down. Unable to disobey God and "submit" to mere human authority, Koresh and his fellow-believers read scripture, prayed, and accepted their "prophesied" fate. The "little season" was past—the waiting period was over.

Government authorities mistakenly believed that the Davidians would come out of the center once it was infiltrated with painful CS gas. If the children were traumatized, it was hoped that parents would usher them outside to safety. Again, the authorities failed to reckon with the nature of religious faith. They failed to perceive the qualitative difference between a group of religious zealots and a group of bandits or counterfeiters. The Davidians really believed that God's authoritative command in Revelation 6:11 and Isaiah 26:20 took precedence over the sufferings of their loved ones.

Had the government authorities seriously researched Davidian faith and practice they would have realized that successful negotiations with them would have never forced them to choose between obedience to divine authority and human authority. By demanding that the members disobey their understanding of God's commands and "submit to lawful authority," the negotiators created a no-win situation for the Davidians. Once they were confronted with such an alternative, it was a foregone conclusion to those with an awareness of the power of religious faith that the Davidians would remain obedient to their understanding of God's command. In effect, the church members were told to choose between obedience to finite human authority and what they perceived to be infinite divine authority. They believed they should place their lives and their children's safety in the hands of the living God rather than in the hands of government forces. Their decision to remain within the center despite the infusion of CS gas set the stage for the final conflagration where the remainder of the people were slain in what the Davidians would call the final phase of the fifth seal.

The origins of the fire which followed upon the infusion of CS gas remains a mystery. It may have started accidently due to tanks knocking over kerosene lanterns—as reported by survivors. Or, it may have been deliberately set by certain leaders inside the center. Either way, most church members went to their deaths believing that their enemies were destroying them on schedule as prophesied in Revelation 6:11. From the Davidian viewpoint, what role did the fire on April 19 play in their understanding of scripture and prophecy?

It is certain that the Davidians were familiar with the numerous biblical references to the role that fire would play in God's final judgment—"fervent heat," "flaming fire," "ashes" are well-known images in apocalyptic passages. Many of these passages confirm that fire would be the means by which God would melt away the old world order and usher in the new. In Malachi 4:1-3 we read that "the day cometh, that shall burn as an oven; and all the proud, yea, and all that do wickedly, shall be stubble: and the day that cometh shall burn them up. . . . for they shall be ashes under the soles of your feet." In verse 5 this "great and dreadful day" of the Lord's fiery wrath is associated with the coming of an "Elijah" who arrives shortly prior to the last day. The Davidians believed that their church was a typological fulfillment of this Elijah prophecy. As the end-time work of Elijah they would fulfill the role of Elijah immediately prior to the coming of the Lord in "flaming fire taking vengeance" (2 Thess. 1:8).

A further association of the work of Elijah with "fire from heaven" is evinced in 1 Kings 18 where Elijah calls down fire which in verse 38 "consumed the burnt sacrifice, and the wood, and the stones, and the dust, and licked up the water." Verse 19 locates this remarkable event as taking place at Mt. Carmel! It may be that the fire of April 19 was called down from heaven as a typological fulfillment of Elijah's conflagration at the earlier Mt. Carmel.

Given the important role that eschatological fire plays in scripture and in Davidian exegesis, it is likely that David Koresh and the church members considered the burning of their sacred center as the prophesied fire which would immediately precede the opening of the sixth seal. For them, the burning of Mt. Carmel could be the spark which would ignite the worldwide conflagration ushering in the "day of the Lord" when the earth "shall be burned up" (2 Pet. 3:10). The Davidians also were familiar with Daniel 11:33 which predicts that the people of God in the last days would be consumed by fire. The passage states: "and those among the people who are wise [the Davidians] shall make many understand, though they shall fall by sword and *flame*." The Davidians also knew the Second Apocalypse of Baruch which states in 10:19:

> make haste and take all things, and cast them into the fire. . . and the flame sends them to him who created them, so that the enemies do not take possession of them.

Some find it difficult to believe that David Koresh could have planned the fire since scripture indicates that the end-time holocaust is to be started by heavenly beings, not humans. But we know that Koresh saw himself in more than human terms. He portrayed himself as the Persian King Cyrus and as King David.[7] He regarded himself as the Lamb of the Book of

Revelation who must be slain (Rev. 5:6,9) before assuming his avenging role as a conquering king. And remarkably he signed two of his last letters as "Yahweh Koresh." Also on a radio interview after the original ATF raid Koresh identified himself as the one who spoke to the woman at the well two thousand years ago in John 4. He also seems to have identified himself with the angel in the Book of Revelation who had in his hand the book with seven seals. Apparently, this same angel fills a vessel with fire and throws it on the earth in Revelation 8:3-5. The text states:

> And *the angel* took the censer, and *filled it with fire* of the altar, and cast it into the earth: and there were voices, and thunderings, and lightnings, and an earthquake.

We do not know whether David Koresh considered this passage to be a prophecy that his last act on earth would be to start the eschatological fire beginning with Mt. Carmel. But his last words may have resonated those of an earlier David three thousand years ago, recorded in 2 Samuel 23:1-7. And these words conclude with a reference to "fire":

> Now these be the *last words of David*. . . . The Spirit of the Lord spake by me, and his word was in my tongue. . . . and they shall be utterly *burned with fire* in the same place.[8]

Perhaps, in those final moments as the fifth seal drew to a close, Koresh saw himself as a Davidic messiah who brings in the final conflagration. Unable to surrender to the enemies of God's people, did Koresh repeat King David's last words and proceed "in flaming fire" to take "vengeance on them that know not God" (2 Thess. 1:7,8)?

It is impossible to know with certainty how the blaze started. But, whoever started the fire, Koresh and his followers considered their own deaths to be a type of martyrdom. The Davidians were familiar with the tradition of self-inflicted martyrdom in Jewish history. The biblical account of the deaths of Saul and his sons would have been known to them as well as the Masada story.[9] At Masada in 72 C.E. Jewish resistance fighters committed mass martyrdom rather than surrender to Roman authorities. After setting fire to their compound, the Masada defenders drew lots and took one another's lives rather than submit to pagan captivity and death. In the last moments their leader, Eleazar, said:

> It is very plain that we shall be taken within a day's time; but it is still an eligible thing to die after a glorious manner, together with our dearest friends. . . . But first let us destroy. . . the fortress *by fire*.[10]

Josephus writes that the fortress wall "was chiefly made of wood, it soon took fire; and when it was once set on fire, its hollowness made that fire spread to a mighty flame!"[11]

Like the Masada defenders the Davidians believed that God did not want them to surrender to their enemies. For this reason David Koresh and his followers refused for fifty-one days to leave their religious center at Mt. Carmel until they had fulfilled God's plan. They perished in a fiery furnace rather than disobey what they believed was God's command to first explain the seven seals in writing before surrendering to the authorities.

Notes

[1]Branch Davidian theology is characterized by

A. an apocalyptic-prophetic tradition
B. a Torah-observant practice, including the Sabbath and festivals of Leviticus 23
C. a mystical orientation, perhaps related to Luriac Kabbalah

[2]*Jesus and the Dead Sea Scrolls*, ed. James H. Charlesworth (New York, 1993).

[3]Koresh concluded that the "key of David" in Revelation 3:7 was a reference to the Psalms written by David. Ingeniously, Psalms 45 was used by Koresh to interpret Rev. 6:1. He argued that since the author of Revelation used symbols drawn from the Hebrew prophets, a correct interpretation of the book must integrate the prophetic writings—especially in view of Revelation 10:7. Since the Davidians preferred the KJV all citations herein are from it.

[4]These prophetic fulfillments included the conceiving of a number of children who were believed to be divinely ordained to rule over the messianic kingdom as the "House of David" in Israel (Ps. 45:16;8:2). Although Koresh intended to explain these fulfillments to the public in writing prior to surrendering to authorities, no detailed account has been given by surviving members.

[5]They understood a "little season" to be less than three months. Since Passover was less than a "season" from February 28, the Davidians believed that their redemption might draw nigh during that holy season. They also relied on the Second Apocalypse of Baruch 28:2 which predicted that physical calamity would fall upon the people of God (read Davidians) after seven weeks or forty-nine days. Thus, it is probable that the Davidians expected trouble from the federals about day fifty-one.

[6]This was the long-awaited "word" from God which the authorities and media continually said they were waiting for him to receive. There is evidence that Koresh may have wanted to observe another Passover one month after the first one in obedience to Numbers 9:10,11 and 2 Chronicles 30. Not understanding the antiquity of this Jewish tradition, the authorities would have seen in this second observance only stalling tactics by a "con man." But the practice is well known and respected in Torah-observant faiths. Read 2 Chronicles 31:1: where

the enemies of God are defeated only *after* a faithful observance of a *second* Passover by a purified people of God.

[7]Surprisingly, there was another Koresh. Cyrus R. Teed changed his name to Koresh after a divine vision in 1869. He, too, founded a community—the "Koreshans" in Chicago and Florida. This first Koresh also proclaimed himself messiah and wrote on the seven seals of Revelation. He died in 1906 after a violent altercation with a marshal in Ft. Myers, Florida. *The Encyclopedia of American Religions*, ed. J. Gordon Melton (Wilmington, NC, 1987), II, 37.

[8]Do not underestimate Koresh's photographic recall of scripture. He informed the ATF that he knew the Psalms backward and forward because *he* wrote them! Israelis said he knew the "*Tanach* cold." Immediately after the ATF raid, Koresh said on Dallas KRLD radio that Psalms 89 would now begin its tragic fulfillment: verses 38ff predict the rejection and death of a David. And in verse 46 *fire* plays a role in the resolution of the crisis.

[9]1 Samuel 31:3-6: "And the battle went sore against Saul, and the archers hit him; and he was sore wounded of the archers. Then said Saul unto his armourbearer, Draw thy sword, and thrust me through therewith; lest these uncircumcised come and thrust me through, and abuse me. But his armourbearer would not; for he was sore afraid. Therefore Saul took a sword, and fell upon it. And when his armourbearer saw that Saul was dead, he fell likewise upon his sword, and died with him. So Saul died, and his three sons, and his armourbearer, and all his men, that same day together." Arthur Droge and James Tabor, *A Noble Death: Suicide and Martyrdom Among Christians and Jews in Antiquity* (San Francisco, 1992).

[10]See Josephus, *Wars of the Jews*, Bk. VII, Chapt. 8, 5-7.

[11]Ibid.

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Transcript of:
"The Last Recorded Words of David Koresh"
(Recorded April 16&18, 1993)

NARRATION: This tape contains the last recorded words of David Koresh. It is taken from telephone conversations between David Koresh and the FBI negotiators. It was recorded by the government, and the tapes were recently released by the Justice Department. The tape has two segments. The first is from April 16 - a Friday. It is from the wee hours of the morning, and David has just optimistically reported to the FBI negotiator that he's finished the first chapter, or segment of his manuscript on the Seven Seals of the book of Revelation. He had pledged on the previous Wednesday, and sent out a signed legal agreement, that he would exit the Mt. Carmel Center upon completion of the manuscript. The tone of the conversation is quite optimistic and upbeat, both from David's side and from the side of the FBI listening to his report.

KORESH: . . . I say that when I get through writing these, and they're given to my attorney, and my attorney hands them over - What's the two theologians names?
Steve Schneider: Philip Arnold and Jim Tabor.
Koresh: Philip Arnold and Jim Tabor who has shown that they have a sincere interest in these things - you see. Then I can spend all my time in jail, and people can go ahead and ask me all the stupid questions they want - cause they're not gonna ask me about the seals. They're gonna say, "Ah, do you molest young ladies?" "Ah, have you eaten babies?" "Do you sacrifice people?" "Ah, do you make automatic weapons?" "Ah, do you have [?]" That's what they're gonna be interested in - sensationalism.
FBI: That's why you need to get it done before you leave there then.
Koresh: That's why I'm gonna complete it, because you see, you know as well as I do that people in this world they want something dramatic and sensational. They don't want to have to sit - No one's gonna sit there - let me sit there in front of a camera and read Psalms 40 to them - to prove the first seal. Dick, it's a real world, and that's why I'm sympathetic with your position. I realize you're frustrated, and I agree with you.
FBI: I'm not frustrated. I went home and I'm back. I'm no longer frustrated. I never was frustrated.
KORESH: Did you take a shower for me?
FBI: Well, yeah. I took a couple of them for you.
KORESH: Thank you. I appreciate it.
FBI: Now listen. Let's get back to the point in hand. This ah - you know - the writing of the seals. OK. You've got to do that in there, and it's gonna take you x amount of time. Just tell me this David - are you saying that when you finish that manuscript -
KORESH: Then I'm not bound any longer [unintelligible] -
FBI: No. But see, that doesn't answer the question.
KORESH: Then I'll be out - yes - definitely.
FBI: I know you'll be out, but that could - excuse me I've got a cold. That could mean a lot of things David. That could mean -
KORESH: I'll be in custody in the jailhouse. You can come down there and feed me bananas if you want to.
FBI: I know - I know that some point in time that's true. But I'm getting from you - I'm asking you, "When that is finished, are you than telling me that you are coming out the next day, or two hours after you send that out or what?"
KORESH: Oh, I'll probably - when I - when I bring it out - see - my attorney is gonna get the - get to the copy.
FBI: Right.
KORESH: OK? And as soon as he hands it over to the scholars - the theologians -
FBI: Um, hm.
KORESH: Right? That's when - he's gonna come back, and that's when I'm going to go out with him, because he said point blank that - you know - one of the guarantees of me arriving down there is that he is gonna go with me.
FBI: So you go on paper here and said that David Koresh told me that as soon as he finishes this manuscript - the seven seals - of which you've finished the first chapter dealing with the first seal -
KORESH: The first seal - right.
FBI: That you're gonna make that available -

KORESH: I'll be splitting out of this place. I'm so sick of MRE's - Dick - that ah -
FBI: Well, I just want to make sure that I have this right - that you're coming out. As soon as that's finished -
KORESH: That's what - it was said by the attorney's -
FBI: Well, I know - I know.
KORESH: That's what I'm saying -
FBI: OK.
KORESH: It's clarified. Lock, stock, and barrel it.
FBI: I mean - I've heard you say that you're coming out after, but that is not specific. That's a game that we all can play.
KORESH: It's - look, I know. Dick -
FBI: But I'm asking you for your word. You say that you're coming out as soon as that's done, and you give up the manuscript to DeGuerin who is gonna make copies available for Arnold and the other - the other fella -
KORESH: Right.
FBI: The other Biblical scholar, and then you are coming out with that manuscript.
KORESH: I'm outta here. And he's he's gonna come, and the way the procession is to be - I'm to go out first with him, and then I think, "You're last, right Steve?"
Steve Schneider: Yeah.
KORESH: With his attorney, and the other people - the other people in between.
FBI: OK. Then - you know what? I'm keeping you from getting back to work. So I'm - you know what I'm gonna do? I'm gonna let you go so that you can get back to work, because David, frankly I'm eagerly awaiting this manuscript.
KORESH: Well, I'll tell you what. It's gonna blow your socks off.
FBI: Well - I'm - I'm perfectly willing to - to read it, and I'm looking forward to it as a member -
KORESH: You'll either hate me or love me then.
FBI: Well, I want to read it - and then - I'll make a decision then, and we'll see how it goes. And in the meantime, ah - you know - let's get that thing written.

NARRATION: The first chapter of David's manuscript that had been completed was carried out of the burning building on April 19 by his secretary and stenographer Ruth Riddle. That was on a computer disk. This disk was subsequently turned over to David's attorney Dick DeGuerin, and according to David's instructions DeGuerin passed it on to James Tabor and Phil Arnold. It's now published in the appendix to a recent book, "Why Waco? Cults and the Battle for Religious Freedom in America." It also - the book contains a commentary by Arnold and Tabor on the manuscript. This next segment of the tape is indeed the last recorded words, or conversation of David Koresh. It was recorded on April the 18th - Sunday - the day before the fire at about two o'clock in the afternoon. Koresh called the FBI negotiators. He's quite upset and angry, because they have begun to remove cars and clear the area in front of the building. First of all, he is upset that evidence might be destroyed that would relate to what had happened on February 28 in the initial BATF raid on Mt.Carmel. Secondly, he is concerned about property damage in general. And it's clear from the tone of his voice that he suspects that something might be up, and that indeed the agreement that he feels he's reached with the FBI to write the manuscript, and then exit peacefully, could fall apart and not be carried out.

FBI: This is Henry.
KORESH: Ah - Henry, this is Dave.
FBI: Hi Dave.
KORESH: Look. The ah - the generals out here - right? You have a hard time controlling them, right?
FBI: I don't control them. No.
KORESH: OK. Well look. We have done everything we can to be able to communicate in a nice, passionate way. We've ah - you know - I've told you what our work with God is. And ah - we've been kind. We've not been your everyday kind of cult. We've not been your everyday kind of terrorist which I'm sure you - you're familiar with having to deal with.
FBI: Um, hm.
KORESH: And a lot of the things that the FBI, or these generals are doing is just kinda way beyond the scope of reason. And they're not only destroying private property, they're also removing evidences. And this doesn't seem

like that ah - these are - these are moves that should be made by a government who says to a people that we're going to be able to take this up in a court of law. I mean - they're not ever - they're not going to be able to replace a lot of things here. Like that 68 SS El Camino that belonged to Paul Fatta?
FBI: Um, hm.
KORESH: They'll never be able to replace that. They don't have any more of those. And ah - the 68 Camero and other things out here in the front.
FBI: Um, hm.
KORESH: They can't replace that. They just can't replace it.
FBI: Um, hm.
KORESH: And - ah - they keep - they keep doing these kind of things it's just proving to us that they're not - they're not showing good faith in their part, and I just - I just suggest they shouldn't do it.
FBI: I understand what you're saying, and I will impart that ah -
KORESH: In all courtesy's please - please impart that, because - because it's coming to the point to where ah - you know - God in heaven has somewhat to do also. And it's just really coming to the point of really, "What - What do you men really want?"
FBI: I think what - you know - just - this is - I'm just imparting to you what my perception is. And my perception is that - that - what they want is they want you and everybody to come out. You know - I -
KORESH: I don't think so. I think what they're showing is that they don't want that.
FBI: Well, I think that - that is exactly what they want.
KORESH: No. They're not gonna - they're not gonna - they're not gonna get that. They're not gonna get that by what they're doing right now. They're gonna get exactly the opposite - exactly the opposite. They're gonna get wrath on certain people. They're gonna get anger from certain guys. Now I can't control everybody here.
FBI: I think you can.
KORESH: No. I can't. You gotta understand John -
FBI: Henry.
KORESH: Henry - I'm sorry. In 1985, I presented a truth. And everybody that's here - I had to debate and I had to talk to, and I had show from the scriptures. I had to prove my point for many hours, days, months, and sometimes years with certain people here.
FBI: Um, hm.
KORESH: They went to scholars. They went to theologians. I have a very unique group here.
FBI: Yes. You do.
KORESH: Not ignorant people - not stupid people. Now there are some people -that in the beginning - that went out like Kevin and Brad. Individuals that were - you know - people that wee out there bar rollers and stuff like that. Tough and tough guys. Now they're not the theologians of the world, but they're guys that need a lot of patience, and - you know - with a little bit of refinement and a little bit of proof to them - they can - they can be good people.
FBI: Um, hm.
KORESH: But ah - but I would really and in all honesty and in good faith tell these generals to ah - to - to back up. They don't need to tear up anymore of this property. You tell us out of one side of the mouth, we're going to be able to come back here and all this. And ah - you know - we're gonna take this up in court, and on the other hand you're showing us there's not gonna be nothing to come back to.
FBI: I think the problem with this thing David is that this thing has lasted way too long.
KORESH: Oh, it - it - it has. It should have never gotten started this way -
FBI: You're right.
KORESH: And that was not our fault.
FBI: Ok. But -
KORESH: Now you don't wish to speak to the issues of the beginning of this -
FBI: No. I don't. And - and what the issues were - you know at that time is something else. The problem is not what the issues were at that time - the problem is this has lasted way too long. You know -
KORESH: I'm gonna finish my book or I'm not gonna finish my book.
FBI: Well, I hope that you do.
KORESH: Well, let me tell you this. These men who everyday - we try to show them good faith - have walked out in front of us, they've driven their tanks up to us, they've bust in the side of the building a little bit one time.

You said that was a mistake - that was not in your control - that wasn't in the commander's wishes. You know - all of this has been shown that if these guys want to fight - I don't want to fight. I - I want - I'm a life too, and there's a lot of people in here who are alive. There's children in here.
FBI: That's right.
KORESH: And we're also American's. And I think - I think that America has a patronage - a very clear patronage of individual citizens who - who - who - who have a breaking point.
FBI: Well, that's true.
KORESH: The government this stronger - it can come on to something that we have worked for hard. We worked when we got on this property. Al lot of hard hours. This place was a dump. We fixed it up. We built this little house here. It's not extravagant. You know - there's a lot of people here with a high commission and a lot of love and concern, not just for our own lives, but for everybody's lives. And if this is the way our government is showing the world what its tactics are to get someone to - to - to - to - to do as they wish when realistically, our - our rights have been infringed upon right and left.
FBI: But there's a way to resolve that David.
KORESH: Yes. Yes.
FBI: And the way to resolve it is for you to come out and lead your people out.
KORESH: Your way is that you're gonna keep - you're gonna keep destroying our property.
FBI: This - this probably would not have had to happen -
KORESH: It never did have to happen.
FBI: That's right. And - and then - you know - if you would have come out on - on the day that you indicated that you promised that you were gonna come out none of this would have taken place.
KORESH: Look. You denounce the fact that I have a God that communicates with me. That's - that's the first mistake that we - that we make.
FBI: Nobody - nobody - nobody is saying anything about your religious beliefs, your thoughts. your ideas -
KORESH: Listen. But you are -
FBI: Or anything like that.
KORESH: You're - you're saying -
FBI: The same things that you can do there you could do out - out here.
KORESH: That's what you say. I - I think that you are lying. As a matter of fact, I know that when the first month or so that I'm out, I'm gonna be bombarded all of the time with nothing but people wanting to know Koresh asking this - asking that.
FBI: And if you were working on the seven seals - I mean - nobody would bother why. I mean - why would you - why would that have to happen?
KORESH: I have my responsibility also to [you]. Come on, look at the reality of things.
FBI: And the reality of things is that there are priorities.
KORESH: OK. But you put your priorities -
FBI: And you're priority and everybody's priority should be in the safety of the children -
KORESH: All right.
FBI: And the safety of the women, and the safety of everybody
KORESH: You're fixing - you are fixing to ruin - your commanders are fixing to ruin the safety of my and my children. My life - the lives of my wives - the lives of my friends - my family. You're fixing to step across the ribbon.
FBI: I think that - that was something that you brought on. It has nothing to do with the commanders, David.
KORESH: All right. I brought on - if this - if this is the corner of the box that you place me into -
FBI: I think that you're placing yourself in that David. I don't think anybody is forcing it -
KORESH: No. No. You're the one who moving forward. You're the one who -who has violated - your generals have violated our constitutional rights. You have made us guilty before proving so.
FBI: I don't think so.
KORESH: You actively brought a band of - of people who didn't announce themselves. They came - I was at the front door. I was willing to talk to them. They shot at me first.
FBI: See, now you're talking about - you're talking about the ATF.
KORESH: About something that you don't want to prove as a matter of a fact. You're telling me - now you've - now you telling me that I am under arrest. I have to come out and I -

FBI: When somebody's under arrest that doesn't mean that it - that you've already been proven guilty. It just means that you've been charged.
KORESH: No. I'm being punished. We've already been punished. We've been placed in jail. We're being punished as guilty.
FBI: Well, that is something that you chose for everybody inside.
KORESH: That is not correct.
FBI: Sure it is because -
KORESH: That is something that you chose as a confinement.
FBI: Because if you had walked out that day as you promised, by now who knows where we would have been You know - you probably would be out on bail for God sakes.
KORESH: John - all I can say is - is that if you want to - to - to place this in the history books as one of the saddest days in the world -
FBI: Well, I think that the - the - the rules for your safety still apply. There's no reason - you know - to think that - that - that they shouldn't apply.
KORESH: OK. I understand your rules. I'm just simply asking you in all good faith, and all good manner to - you tell the general it's enough to tear up our property.
FBI: I will tell them exactly what you said. But you need to understand that - um - I'm talking up. It's not - you know - talking down. So - you know - what I suggest and what I will suggest is exactly what you said. I've suggested that and I've suggested other things. I have no - no problem in - ah - you know -
KORESH: You tell em we love em. We love em and - you know -
FBI: And you're willing to send out thirty people.
KORESH: Look.
FBI: Fifty?
KORESH: Whoever wants to go out can go out.
FBI: No. No. No. No. Don't tell me that. Tell me that you're sending somebody out.
KORESH: I'm not going to - see - you don't understand about these people yet.
FBI: And you don't understand about the people here yet either.
KORESH: OK. Well if that's the way we want to play then we come to a point where -
FBI: I'm not wanting to play anything -
KORESH: But it - you are playing.
FBI: No. I'm not. I'm telling you.
KORESH: Everyone in the tanks - everyone in the tanks out there is playing.
FBI: No. Nobody is. People just want to see some progress.
KORESH: Look some progress is being made. You don't realize what kind of progress is being made. There are people all over this world who are going to benefit from this book of the seven seals. You don't seem to understand.
FBI: And what you don't seem to understand is - is that the people here want to see that kind of progress, but other kind of progress. There's's no reason why you couldn't be doing the same very thing that you are doing now within the place out here.
KORESH: That's not true. What you're saying is not based on truth.
FBI: Why not? Why not? What do you mean it's not -
KORESH: Because it's not.
FBI: Your attorney is gonna be your attorney whether you're in there or out here. Anything that you want your - all you'd have to do is - is furnish it to him.
KORESH: An attorney -
FBI: Why would he not comply with your wishes?
KORESH: That's - the legal system is not the majority of the attorney. The legal system is a completely sophisticated - lot's of - lot's of Indian chief - ah -system. It's not just where you got one guy who is hired to speak on your behalf in a court case in front of a jury.
FBI: Yes. But - but what I'm saying -
KORESH: There's more to it than just - I was in jail in 1988.
FBI: And - and how did it come out?
KORESH: It came out wonderful, because -

FBI: Well, there you go. There you go.
KORESH: Well the thing of it is - is that you don't understand the amount of cost it takes to get that legal representation too.
FBI: Well -
KORESH: And this was something - this was something that the Sheriff's department got us in.
FBI: Well, that was - that was then. You have an attorney now. You know - the same work that you're doing there you can be doing out here.
KORESH: It's a different more high profile case type situation. I just - I just suggest that it would be a very bad thing for you to - to keep destroying all this evidence out here.
FBI: Well - you - know - I really don't have any control over that.
KORESH: I mean what are they doing? Are they - are you covering up the ATF? That's exactly what it appears you're doing.
FBI: David, what we're trying to do is were trying -
KORESH: It's wrong! You're doing wrong before God - before man. You are doing wrong! You adding to your wrong.
FBI: David, you're the one that's doing wrong.
KORESH: No. No. No. No. No. No. No.
FBI: You seem to have -
KORESH: No.
FBI: No concern about -
KORESH: You know we can't stay in here forever.
FBI: Anybody within the place except yourself.
KORESH: You know that we can't stay in here forever.
FBI: You know - if you could send - OK. Well send fifty people out. Send fifty people out right now.
KORESH: Does fifty of you want to go out?
FBI: You don't have to ask. All you have to do is say, "Look, I want fifty volunteers," and they'll come out. If you send fifty people out.
KORESH: They're saying because of these things they want to stay the more.
FBI: And I guess that you have no control over anybody. You know -
KORESH: You've got to understand, what I have control -
FBI: This is your responsibility. This is your responsibility because you're the leader. Their safety is in your hands. These people look -

NARRATION: The tape breaks off abruptly at this point, and I'll close this tape with a final short segment from Friday April 16.
FBI: Now are you telling me David - I want to get this clear in my own mind. Are you telling me that as soon as you reduce the seven seals to a written form that you're coming out of there. I don't mean two days later -
KORESH: I have no reason - I have no reason to -
FBI: I know what you're saying, but answer my question if you would please - definitely. I mean - I want to get an answer to this, "Are you coming out as soon as your done -"
KORESH: I'm coming out.
FBI: Or are you coming out afterwards at some point in time.
KORESH: After I get the thing - see Dick, you don't seem to understand. We are going to fulfill our commitment to God. Now, if you would allow me to show you what has been pre-written by the prophets you would know what I am doing.
FBI: Well, I'm asking you -
KORESH: You see -
FBI: A simple question though. I -
KORESH: And I'm giving you the simple answer, "Yes." "Yes." "Yes." I never intended to die in here.

End of tape

The Decoded Message of the Seven Seals of the Book of Revelation

By David Koresh

EDITORIAL PREFACE

On Wednesday, April 14th, following the eight day Passover celebration David Koresh released what turned out to be his final letter through his lawyer, Dick DeGuerin. In it he joyfully reported that "his waiting period was over" and that upon completion of a manuscript containing the "decoded message of the Seven Seals" he would come out. He considered the composition of this manuscript to be a privilege allowed him by God, the direct answer to his prayers which he had sought for the past seven weeks.

Although many questioned both the ability and intention of David Koresh to produce this manuscript, we received this news with great relief. We had been urging David for several weeks through radio broadcasts and cassette tapes to exit Mt. Carmel peacefully as he now proposed to do. We had based our case to him on interpretations of the Book of Revelation which we felt he might find persuasive. This was only five days before the tragic fire on April 19th.

We now know that David Koresh did begin work on his manuscript and truly took it most seriously. A computer disk containing his dictated text was carried out of Mt. Carmel by Ruth Riddle, a survivor of the fire. Indeed, Ruth tells us that she and David worked for several hours on Sunday night, the last night of his life; him dictating and she typing out his thoughts. She reports that the Branch Davidians were calm and joyful that evening at the prospect of David completing his work and their impending exodus.

David's work will speak for itself to those who are interested in his exegesis and understanding of the mysterious Seven Seals of the Book of Revelation. Regardless of one's evaluation of the content, one point is clear--in a short time, under most trying circumstances, David Koresh had produced a rather substantial piece of work. He had completed the Preface, which is a poem, the Introduction to the work as a whole, and Chapter One, which covered the First Seal. Judging from this work we can estimate that the finished product would have run about 50-75 pages and might have taken him another two or three weeks.

David Koresh, in that last letter, asked that the completed manuscript be given to his lawyer, Dick DeGuerin, then passed on first to us. He had apparently come to trust our knowledge and integrity in discussing with him his interpretations of Revelation. He then authorized our release of copies to scholars, religious leaders, and the general public. Although David died a few days later, and was thus prevented from finishing this work, we still thought it best to release this portion which he did complete, following his instructions. Actually, his exposition of the First Seal was perhaps the most vital in understanding his sense of his own mission, the reasons for the Waco siege, and what ultimately transpired.

The text is produced here precisely as it came to us from the computer disks. In the interest of accuracy we have also carefully consulted Ruth Riddle, who typed it on the Sunday evening before the fire. For the sake of brevity she did not type all of David's verbal quotations of scripture -- planning to insert them later. We have put these citations in *italics*. On rare occasions, we have supplied punctuation and a missing word in [brackets].

David's last sentence is a suggestive one which urges readers and followers to be ready to "come out of our closet." He calls upon those of us on the outside to forsake our own personal dark closets and he summons the Branch Davidians to "come out" of Mt. Carmel and face the world as lovers of Christ. Chapter One concludes with two scriptural quotations which promise the reader that God will one day re-establish David's fallen community.

Dr. Phillip Arnold
Dr. James Tabor
Rosh Hashanah, 1993

EDEN TO EDEN

Search forth for the meaning here,
Hidden within these words
`Tis a song that's sung of fallen tears,
Given way for two love birds.

Love birds yet not of feathered creed
Shot down for gambled play,
And caged a far distance betweenst themselves
For the hunter felt it best that way.

"She bird is mine," the hunter said,
'Twas this bird I raised and faithfully fed."
'Twas he bird who released her from her cage,
Sought her womb in youthful age.

Love birds the name, these birds they call,
Two, plural, love bird, takes two.
'Twas not her womb of which he sought,
And certainly not her youth.

Love birds, the name these birds they call,
Two, plural, love bird, takes two,
It's just that he needed she,
To fly the skies of blue.

And now we see the hunter man,
Robbed without a prey,
The evil which he sought to do,
Caused the birds to pass away.

For loneliness and solitaire,
Is death to every soul.
For birds of God were meant to pair,
The two to complete the whole.

And now we see the final meaning
Of this rhyme and verse:
The pending judgment of the King
Who rules the universe.

For with Adam and his spirit Eve,
To share the kingdom fair;
But when they sinned they lost their crown
In exchange for shame to bear.

So Eve travailed and brought forth death,
And passed the crown to all;
For each to learn the lesson here,
The kingdom of the fall.

For virgins do not bring forth sons,
Until God does reverse,
The inner meaning of the law,
To remove man from the curse.

For in the Christ, we've seen a bride,
The water mixed with blood,
The wife with cloven tongues of fire,
Of whom the Christ has loved.

And now He's back to sing His song,
The life of every spring,
And love birds gather, each one with mate,
For the marriage of the King

INTRODUCTION
John 18:33-38

Then Pilate entered into the judgment hall again, and called Jesus, and said unto him, Art thou the King of the Jews? Jesus answered him, Sayest thou this thing of thyself, or did others tell it thee of me? Pilate answered, Am I a Jew? Thine own nation and chief priests have delivered thee unto me. What hast thou done? Jesus answered, My kingdom is not of this world; if my kingdom were of this world, then would my servants fight, that I should not be delivered to the Jews; but now is my kingdom not from here. Pilate therefore said unto him, Art thou a king, then? Jesus answered, Thou sayest that I am a king. To this end I was born, and for this cause came I into the world, that I should bear witness unto the truth. Everyone that is of the truth heareth my voice. Pilate saith unto him, What is truth? And when he had said this, he went out again unto the Jews, and saith unto them, I find in him no fault at all.

Strange indeed for the judgment of man, for who knows within himself that his judgment be true?

Scripture tells us that Pilate was convicted of the truth in Christ, but failing to take heed thereto, he lost his soul, causing the blood of the innocent to be shed. How many of us since the dawning of time have committed such things? Who was this Jesus? Who was this Saviour that nearly a whole religious nation rejected?

Matthew told us. Mark, Luke, and John all recorded their side of the story of which remains unto this day, read and judged of all. Likewise, the Acts, the Book of Romans, Corinthians, Ephesians, Galatians and such books open for our learning this most unique mystery of judgment and justice undone. But of all the records the most awe inspiring remains to be the most misunderstood, that being the Revelation of Jesus Christ written by the Apostle John to the churches of Asia and left on record that all who follow may ask the question:

"Who is this Christ and what remains to be the mystery of Him?"

In my work to unfold this mystery to you I will not use great techniques of scholarly display nor in-depth reasonings of philosophy, no sophisticated, congenial language shall be used, just simple talk and reason.

First of all, *"the Revelation of Jesus Christ which God gave unto Him to show unto His servants things which must shortly come to pass"* are to be seen just as that: a revelation of Jesus to reveal to men His wishes and His desires for those who make up His church. For the kingdom of God being that of heaven, and not of this world, is to be revealed unto this world by the means He has chosen --"the *foolishness of preaching."* John the Apostle while on the Isle of Patmos received the Lord's messenger and in obedience placed in written form all that he saw and all that he heard pertaining to the mysteries of Christ. And in good faith the Apostle stated, *"Blessed is he that readeth, and they that hear the words of this prophecy, and keep those things which are written therein for the time is at hand"* (Revelation 1:3).

Likewise John was commanded of the angel, "*"Write the things which thou hast seen, and the things which are, and the things which shall be hereafter"* (Revelation 1:19). Simply, John's record contains the past, present, and future events that revolve around the Revelation of Jesus Christ. John in faithfulness sent his writings to the seven churches in Asia and the will of Christ for these churches is plainly revealed from chapter 2 to chapter 4 of Revelation. Therefore on record, all may read and see how Christ has dealt with His churches of old.

Our subject of interest will be taken up from chapters 4-22, for these passages entail the events that are to be after John's time. For it is written (Revelation 4: entire chapter):

After this I looked, and, behold, a door was opened in heaven: and the first voice which I heard was as it were of a trumpet talking with me; which said, Come up hither, and I will show thee things which must be hereafter. And immediately I was in the spirit; and, behold, a throne was set in heaven, and one sat on the throne. And he that sat was to look upon like a jasper and a sardine stone: and there was a rainbow round about the throne, in sight like unto an emerald. And round about the throne were four and twenty seats: and upon the seats I saw four and twenty elders sitting, clothed in white raiment; and they had on their heads crowns of gold. And out of the throne proceeded lightnings and thunderings and voices: and there were seven lamps of fire burning before the throne, which are the seven Spirits of God. And before the throne there was a sea of glass like unto crystal: and in the midst of the throne, and round about the throne, were four beasts full of eyes before and behind. And the first beast was like a lion, and the second beast like a calf, and the third beast had a face as a man, and the fourth beast was like a flying eagle. And the four beasts had each of them six wings about him; and they were full of eyes within: and they rest not day and night, saying, Holy, holy, holy, Lord God Almighty, which was, and is, and is to come. And when those beasts give glory and honour and thanks to him that sat on the throne, who liveth for ever and ever, the four and twenty elders fall down before him that sat on the throne, and worship him that liveth for ever and ever, and cast their crowns before the throne, saying, Thou art worthy, O Lord, to receive glory and honour and power: for thou hast created all things, and for thy pleasure they are and were created.

John states that *"that which must be hereafter"*--sometime after his day there will be a God who sits on His throne. There will be a jury of twenty-four elders. God will be declared as *"worthy to receive glory and honour and power,"* because unto Him and for Him all things were created.

John continues to say (Revelation 5: entire chapter):

And I saw in the right hand of him that sat on the throne a book written within and on the backside, sealed with seven seals. And I saw a strong angel proclaiming with a loud voice, Who is worthy to open the book, and to loose the seals thereof? And no man in heaven, nor in earth, neither under the earth, was able to open the book, neither to look thereon. And I wept much, because no man was found worthy to open and to read the book, neither to look thereon. And one of the elders saith unto me, Weep not: behold, the Lion of the tribe of Juda, the Root of David, hath prevailed to open the book, and to loose the seven seals thereof. And I beheld, and, lo, in the midst of the throne and of the four beasts, and in the midst of the elders, stood a Lamb

as it had been slain, having seven horns and seven eyes, which are the seven Spirits of God sent forth into all the earth. And he came and took the book out of the right hand of him that sat upon the throne. And when he had taken the book, the four beasts and four and twenty elders fell down before the Lamb, having every one of them harps, and golden vials full of odours, which are the prayers of saints. And they sung a new song, saying, Thou art worthy to take the book, and to open the seals thereof: for thou wast slain, and hast redeemed us to God by thy blood out of every kindred, and tongue, and people, and nation; and hast made us unto our God kings and priests: and we shall reign on the earth. And I beheld, and I heard the voice of many angels round about the throne and the beasts and the elders: and the number of them was ten thousand times ten thousand, and thousands of thousands; saying with a loud voice, Worthy is the Lamb that was slain to receive power, and riches, and wisdom, and strength, and honour, and glory, and blessing. And every creature which is in heaven, and on the earth, and under the earth, and such as are in the sea, and all that are in them, heard I saying, Blessing, and honour, and glory, and power, be unto him that sitteth upon the throne, and unto the Lamb for ever and ever. And the four beasts said, Amen. And the four and twenty elders fell down and worshipped him that liveth for ever and ever.

Very clearly John tells of a judgment in which only one question is asked, *"Who is worthy"* to open or to reveal a book found in the right hand of God clearly sealed with seven seals. John states, *"No man in heaven nor in earth, neither under the earth was able to open the book neither to look thereon."* Then John is pointed to the hope of all men: the Lamb that was slain. Here is a revelation of Christ as our High Priest in heaven. Here His work is revealed: the opening of the mysteries of God. These mysteries of which reveal Christ and His sufficiency to save all whose prayers are directed to God through Him. Likewise Paul the Apostle has stated:

So also Christ glorified not himself to be made an high priest; but he that said unto him, Thou art my Son, to day have I begotten thee.

For the law made nothing perfect, but the bringing in of a better hope did; by the which we draw nigh unto God...But this man, because he continueth ever, hath an unchangeable priesthood. Wherefore he is able also to save them to the uttermost that come unto God by him, seeing he ever liveth to make intercession for them.

But now hath he obtained a more excellent ministry, by how much also he is the mediator of a better covenant, which was established upon better promises.

For Christ is not entered into the holy places made with hands, which are the figures of the true; but into heaven itself, now to appear in the presence of God for us:

But this man, after he had offered one sacrifice for sins for ever, sat down on the right hand of God; From henceforth expecting till his enemies be made his footstool. For by one offering he hath perfected for ever them that are sanctified.

For if we sin willfully after that we have received the knowledge of the truth, there remaineth no more sacrifice for sins,

Of how much sorer punishment, suppose ye, shall he be thought worthy, who hath trodden under foot the Son of God, and hath counted the blood of the covenant, wherewith he was sanctified, an unholy thing, and hath done despite unto the Spirit of grace?

For ye are not come unto the mount that might be touched, and that burned with fire, nor unto blackness, and darkness, and tempest, And the sound of a trumpet, and the voice of words; which voice they that heard entreated that the word should not be spoken to them any more: (For they could not endure that which was commanded, And if so much as a beast touch the mountain, it shall be stoned, or thrust through with a dart: And so terrible was the sight, that Moses said, I exceedingly fear and quake:) But ye are come unto mount Sion, and unto the city of the living God, the heavenly Jerusalem, and to an innumerable company of angels, To the general assembly and church of the firstborn, which are written in heaven, and to God the Judge of all, and to the spirits of just men made perfect, And to Jesus the mediator of the new covenant, and to the blood of sprinkling, that speaketh better things than that of Abel. See that ye refuse not him that speaketh. For if they escaped not who refused him that spake on earth, much more shall not we escape, if we turn away from him that speaketh from heaven: Hebrews 5:5; 7:19,24-25; 8:6; 9:24; 10:12-14,26,29; 12:18-25.

Clearly then, John is showing us of that very event of which Paul the Apostle so clearly writes. Christ is the mediator of the New Covenant and that New Covenant is contained in the seven seals. If we the church have been so long awaiting that which must be hereafter, why is it that so many of us in Christendom have not even heard of the seven seals?

Why is this Revelation of Jesus Christ which God gave to Him such a mystery? The Apostle Peter gives us a clue when he said (1 Peter 1:3-5):

Blessed be the God and Father of our Lord Jesus Christ, who, according to his abundant mercy, hath begotten us again unto a living hope by the resurrection of Jesus Christ from the dead to an inheritance incorruptible, and undefiled, and that fadeth not away, reserved in heaven for you, who are kept by the power of God through faith unto salvation ready to be revealed in the last time.

Truly Christ is our only Saviour, our only Mediator between man and God. Likewise, it is true the opening of the seven seals by Christ is as much or more so important for our salvation as any other former gospels. If this salvation is *"ready to be revealed in the last time,"* as Peter says, then we should hear another statement from the Apostle Peter (1 Peter 1:13):

Wherefore, gird up the loins of your mind, be sober, and hope to the end for the grace that is to be brought unto you at the revelation of Jesus Christ

So the question remains--What are the seven seals? And the answer remains--a Revelation of Jesus Christ which God gave unto Him to show unto His servants things which must shortly come to pass. If these things were to have shortly come to pass then surely they must have

already been fulfilled, and if so, does that mean we are His servants if we know these things not? Or could it be that the things which must be hereafter pertaining to God's throne, the judgment, the book, and the Lamb receiving that book are events directed primarily to the last times or the last days? If that's the case are we in the last days? If so then it must be time for God's servants to know these things (Psalms 90:12-17; 91:1-4; 11:3-4).

So teach us to number our days, that we may apply our hearts unto wisdom. Return, O LORD, how long? and let it repent thee concerning thy servants. O satisfy us early with thy mercy; that we may rejoice and be glad all our days. Make us glad according to the days wherein thou hast afflicted us, and the years wherein we have seen evil. Let thy work appear unto thy servants, and thy glory unto their children. And let the beauty of the LORD our God be upon us: and establish thou the work of our hands upon us; yea, the work of our hands establish thou it.

He that dwelleth in the secret place of the most High shall abide under the shadow of the Almighty. I will say of the LORD, He is my refuge and my fortress: my God; in him will I trust. Surely he shall deliver thee from the snare of the fowler, and from the noisome pestilence. He shall cover thee with his feathers, and under his wings shalt thou trust: his truth shall be thy shield and buckler.

If the foundations be destroyed, what can the righteous do? The LORD is in his holy temple, the LORD'S throne is in heaven: his eyes behold, his eyelids try, the children of men.

The servant of God will find as we continue in our searching of the scriptures that every book of the Bible meets and ends in the book of Revelation. Gems of most sacred truth are to be uncovered, golden promises never before seen are to be brought to view, for when has grace ever been needed more than now in the time of which we live?

CHAPTER 1
THE FIRST SEAL

Although we, the servants of God, do not live in Asia, we are none the less to be beneficiaries of their counsels; and they likewise, not being alive today are no doubt to be a part of the grace which we are to receive.

Revelation 6:1-2. *And I saw when the Lamb opened one of the seals, and I heard, as it were the noise of thunder, one of the four beasts saying, Come and see. And I saw, and behold a white horse: and he that sat on him had a bow; and a crown was given unto him: and he went forth conquering, and to conquer.*

Here in our Heavenly Zion we see the Lamb loose the first seal. This preview of God's revelation of His Son is to be of our utmost interest, for not only will it more clearly reveal the nature of Christ, but it will likewise unfold more clearly the Divine nature of God who is the Author of this revelation.

Now let's turn to Psalms 45:

My heart is inditing a good matter: I speak of the things which I have made touching the king: my tongue is the pen of a ready writer. Thou art fairer than the children of men: grace is poured into thy lips: therefore God hath blessed thee for ever. Gird thy sword upon thy thigh, O most mighty, with thy glory and thy majesty. And in thy majesty ride prosperously because of truth and meekness and righteousness; and thy right hand shall teach thee terrible things. Thine arrows are sharp in the heart of the king's enemies; whereby the people fall under thee. Thy throne, O God, is for ever and ever: the sceptre of thy kingdom is a right sceptre. Thou lovest righteousness, and hatest wickedness: therefore God, thy God, hath anointed thee with the oil of gladness above thy fellows. All thy garments smell of myrrh, and aloes, and cassia, out of the ivory palaces, whereby they have made thee glad. Kings' daughters were among thy honourable women: upon thy right hand did stand the queen in gold of Ophir. Hearken, O daughter, and consider, and incline thine ear; forget also thine own people, and thy father's house; So shall the king greatly desire thy beauty: for he is thy Lord; and worship thou him. And the daughter of Tyre shall be there with a gift; even the rich among the people shall entreat thy favour. The king's daughter is all glorious within: her clothing is of wrought gold. She shall be brought unto the king in raiment of needlework: the virgins her companions that follow her shall be brought unto thee. With gladness and rejoicing shall they be brought: they shall enter into the king's palace. Instead of thy fathers shall be thy children, whom thou mayest make princes in all the earth. I will make thy name to be remembered in all generations: therefore shall the people praise thee for ever and ever.

Verse 1: *"My* (God's) *heart is inditing a good matter: I* (God) *speak of the things which I* (the Creator of all things) *have made touching the King* (Christ), *my* (God's) *tongue is the pen of a ready writer."* Here we see God not only creates all things by His Word but in His

wisdom, He has chosen some things to be written that by the power of His word He may bring to pass in His own time. Here we see God by His written Word foretelling his determined purpose for His Son, Christ.

Verse 2: *"Thou art fairer than the children of men, grace is poured into thy lips; therefore God hath blessed thee forever, Gird thy sword upon thy thigh, O most mighty, with thy glory and thy majesty. And in thy majesty ride prosperously because of truth and meekness and righteousness; and thy right hand shall teach thee terrible things."* Clearly in the Revelation Christ is fairer than the fairest. Those who receive the seals receive the grace found therein. Christ is capable of destroying his enemies for His majesty truly is great in heaven, for it is witnessed that all angels bow before him. What is it that Christ shall ride but the white horse because the book given to Him is the truth and He shall ride prosperously.

Verse 5: *"Thine arrows are sharp in the heart of the king's enemies whereby the people fall under thee."* Here we see the meaning of the bow of which the first seal speaks. Let us pray that none of us refuse *"Him that speaks from heaven"* and the Spirit of Truth that is now speaking from heaven for it is likewise written in verse 6:

"Thy throne O God, is for ever and ever; the scepter of thy kingdom is a right scepter. Thou lovest righteousness, and hatest wickedness: therefore God (Christ), *thy God* (Father), *hath anointed thee with the oil of gladness above thy fellows. All thy garments smell of myrrh, and aloes, and cassia, out of the ivory palaces, whereby they have made thee glad. Kings's daughters were among thy honourable women: upon thy right hand did stand the queen in gold of Ophir, Hearken, O daughter, and consider, and incline thine ear; forget also thine own people, thy father's house; so shall the King* (Christ) *greatly desire thy beauty; for he is thy Lord; and worship thou him."*

How can any man deny that the first seal is a preview into the event spoken of by the 45th Psalm? How important is this insight? How important is it to God, or to Christ, or to the church? While on earth Christ spoke many parables regarding His kingdom and his bride. Let's hear one and see if we cannot more clearly understand the importance of these things. Matthew 22:1-14:

And Jesus answered and spake unto them again by parables, and said, the kingdom of heaven is like unto a certain king, which made a marriage for his son, and sent forth his servants to call them that were bidden to the wedding: and they would not come. Again, he sent forth other servants, saying, Tell them which are bidden, Behold, I have prepared my dinner: my oxen and my fatlings are killed, and all things are ready: come unto the marriage. But they made light of it, and went their ways, one to his farm, another to his merchandise: and the remnant took his servants, and entreated them spitefully, and slew them. But when the king heard thereof, he was wroth: and he sent forth his armies, and destroyed those murderers, and burned up their city. Then saith he to his servants, The wedding is ready, but they which were bidden were not worthy. Go ye therefore into the highways, and as many as ye shall find, bid to the marriage. So those servants went out into the highways, and gathered together all as many as they found, both bad and good: and the wedding was furnished with guests. And when the king came in to

see the guests, he saw there a man which had not on a wedding garment: and he saith unto him, Friend, how camest thou in hither not having a wedding garment? And he was speechless. Then said the king to the servants, Bind him hand and foot, and take him away, and cast him into outer darkness; there shall be weeping and gnashing of teeth. For many are called, but few are chosen.

Notice that in this parable of Matthew, Christ clearly teaches that those with indifferent attitudes who would not come to the Marriage Supper were to be slain. Their disinterest offended the King who we know is God. So, likewise, today if we disregard the truth of the first seal we really disregard Christ, who opened it and in so doing we disregard God who gave it. This indifference most surely will place one's salvation in jeopardy.

Matthew 21:42:

Jesus saith unto them, Did ye never read in the scriptures, The stone which the builders rejected, the same is become the head of the corner; this is the Lord's doing, and it is marvelous in our eyes?

In this passage we see Christ pointing his hearers to the Rock (His God). We know in Revelation 4 God is pictured as one who appears to be as jasper and sardine stone. This one is the same stone to which Christ referred to. So again we are reminded that what the Father gives to Christ is a revelation of Jesus Christ that God gives to Him to show unto his servants.

Was it really David who wrote the Psalms or was it God who spoke through David? Was it really the prophets who wrote their books or was it God who spoke through the prophets? If it was God, we must conclude God claims the book as His and we should more earnestly take it as God's Word.

We find now in Revelation 19 a verification of the events we have just read.

Revelation 19:1-13.

And after these things I heard a great voice of much people in heaven, saying, Alleluia; Salvation, and glory, and honour, and power, unto the Lord our God: for true and righteous are his judgments: for he hath judged the great whore, which did corrupt the earth with her fornication, and hath avenged the blood of his servants at her hand. And again they said, Alleluia. And her smoke rose up for ever and ever. And the four and twenty elders and the four beasts fell down and worshipped God that sat on the throne, saying, Amen; Alleluia. And a voice came out of the throne, saying, Praise our God, all ye his servants, and ye that fear him, both small and great. And I heard as it were the voice of a great multitude, and as the voice of many waters, and as the voice of mighty thunderings, saying, Alleluia: for the Lord God omnipotent reigneth. Let us be glad and rejoice, and give honour to him: for the marriage of the Lamb is come, and his wife hath made herself ready. And to her was granted that she should be arrayed in fine linen, clean and white: for the fine linen is the righteousness of saints. And he saith unto me, Write, Blessed are they which are called unto the marriage supper of the Lamb.

And he saith unto me, These are the true sayings of God. And I fell at his feet to worship him. And he said unto me, See thou do it not: I am thy fellowservant, and of thy brethren that have the testimony of Jesus: worship God: for the testimony of Jesus is the spirit of prophecy. And I saw heaven opened, and behold a white horse; and he that sat upon him was called Faithful and True, and in righteousness he doth judge and make war. His eyes were as a flame of fire, and on his head were many crowns; and he had a name written, that no man knew, but he himself. And he was clothed with a vesture dipped in blood: and his name is called The Word of God.

Notice how in verse 9 it says, *"Blessed are they which are called unto the marriage supper of the Lamb!"* And he said unto me, *"These are the true saying of God!"* Being the true saying of God, the first seal of Revelation 6:1-2 must be true according to the saying of God in Psalms 45. And how can we be *blessed* if we know nothing about the *Marriage Supper of the Lamb* nor what it entails?

Isaiah 33:17:

Thine eyes shall see the king in his beauty; they shall behold the land that is very far off.

Are we starting to see the King a little more clearly? And how about that heavenly land very far off?

Isaiah 55:3-4:

Incline your ear, and come unto me; hear, and your soul shall live, and I will make an everlasting covenant with you, even the sure mercies of David. Behold, I have given him for a witness to the people, a leader and commander to the people.

Has not David truly witnessed on behalf of God by God's own power this beautiful marriage of which all are called to receive the knowledge of.

Isaiah 61:8-10:

For I the LORD love judgment, I hate robbery for burnt offering; and I will direct their work in truth, and I will make an everlasting covenant with them. And their seed shall be known among the Gentiles, and their offspring among the people: all that see them shall acknowledge them, that they are the seed which the LORD hath blessed. I will greatly rejoice in the LORD, my soul shall be joyful in my God; for he hath clothed me with the garments of salvation, he hath covered me with the robe of righteousness, as a bridegroom decketh himself with ornaments, and as a bride adorneth herself with her jewels.

We should surely at this moment realize the importance of learning more thoroughly the meaning of Christ according to the seals lest we be found without *"the wedding garment"* of God's judgment, for if we receive this enlightenment, this grace which comes from heaven, we

shall surely be partakers of *the marriage of the Lamb* for we are the guests who will *"Hearken and consider."*

Jeremiah 23:5,6,7,8,18,19,20:

Behold, the days come, saith the LORD, that I will raise unto David a righteous Branch, and a King shall reign and prosper, and shall execute judgment and justice in the earth. In his days Judah shall be saved, and Israel shall dwell safely: and this is his name whereby he shall be called, THE LORD OUR RIGHTEOUSNESS. Therefore, behold, the days come, saith the LORD, that they shall no more say, The LORD liveth, which brought up the children of Israel out of the land of Egypt; but, The LORD liveth, which brought up and which led the seed of the house of Israel out of the north country, and from all countries whither I had driven them; and they shall dwell in their own land...For who hath stood in the counsel of the LORD, and hath perceived and heard his word? who hath marked his word, and heard it? Behold, a whirlwind of the LORD is gone forth in fury, even a grievous whirlwind: it shall fall grievously upon the head of the wicked. The anger of the LORD shall not return, until he have executed, and till he have performed the thoughts of his heart: in the latter days ye shall consider it perfectly.

This beautiful prophecy, the Desire of Ages, entails of Christ the Lord our Righteousness and also warns us of the latter days should we be found not standing in the counsel of the Lord. If we, the church of God, stand in the counsel of Christ, especially in the light of the seven seals, shall we not be a part of that beautiful bride spoken of in Jeremiah 33?

Jeremiah 33:14-16:

Behold, the days come, saith the LORD, that I will perform that good thing which I have promised unto the house of Israel and to the house of Judah. In those days, and at that time, will I cause the Branch of righteousness to grow up unto David; and he shall execute judgment and righteousness in the land. In those days shall Judah be saved, and Jerusalem shall dwell safely; and this is the name of which she shall be called, THE LORD, OUR RIGHTEOUSNESS.

She, the city, she, the saints, those who are clothed with the righteousness of Christ and His Word, for it is also promised in verse 17, *"David shall never want a man to sit upon the throne of the house of Israel."* For Christ remains a King *"forever."* (Psalm 45:6)

Ezekiel 37:24-25 Daniel 12:1:

And David my servant shall be king over them; and they all shall have one shepherd: they shall also walk in my judgments, and observe my statutes, and do them. And they shall dwell in the land that I have given unto Jacob my servant, wherein your fathers have dwelt; and they shall dwell therein, even they, and their children, and their children's children for ever: and my servant David shall be their prince for ever.

And at that time shall Michael stand up, the great prince which standeth for the children of thy people: and there shall be a time of trouble, such as never was since there was a nation even to that same time: and at that time thy people shall be delivered, every one that shall be found written in the book.

If we are to be found written in the book, surely we should be found in the first seal for where Christ is revealed, shall not we also be revealed as one who *"hearkens and considers"* for is not He *"our Lord"* and shall not we *"worship"* him *"in spirit and in truth"* (John 4:24).

In Hosea 2:14 we read, *"Therefore, behold I will allure her and bring her into the wilderness, and speak tenderly unto her."* The Christian Church being scattered from Jerusalem went throughout all nations. Being amongst the Gentiles, the gospel was to impart unto the Gentiles the riches of God's mercy.

Verse 15: *"And I will give her her vineyards from thence, and the Valley of Achor for a door of hope; and she shall sing there, as in the days of her youth, and as in the day when she came up out of the land of Egypt."* Here it is promised that once the unfaithful ones as Achan are taken from amongst God's people we will definitely have a deliverance as all the prophets agree.

Verse 16: *And it shall be at that day, saith the LORD, that thou shalt call me Ishi, and shalt call me no more Baali.* If we are to call God by such an endearing term, we are to know Him a little better and what better [way] to know him than in the revelation of Jesus Christ.

Verse 17: *For I will take away the names of Baalim out of her mouth, and they shall no more be remembered by their name.* All false teachers and false prophets are to be forgotten for there is one God, and one Lamb and one seven seal truth.

Verse 18: *And in that day will I make a covenant for them with the beasts of the field, and with the fowls of the heavens, and with the creeping things of the ground; and I will break the bow and the sword and the battle out of the earth, and will make them to lie down safely.* Just as Isaiah 11 has promised, so Hosea also promises, peace for those who are called to the Marriage Supper of the Lamb.

Verses 19 and 20: *And I will betroth thee unto me forever; yea, I will betroth thee unto me in righteousness, and in judgment, and in loving-kindness, and in mercies. I will even betroth thee unto me in faithfulness; and thou shalt know the LORD.* So again, here we see the importance of this opportunity of learning these seven seals and the complete entailment of what that includes.

Verse 21: *And it shall come to pass in that day, I will hear, saith the LORD, I will hear the heavens, and they shall hear the earth.* Are we not a part of this event by faith? Is not heaven in total unity to the receiving of these seals from God? Is not God's word supreme in heaven? And it being the Word which reveals Christ now is the time like never before to pray that we may be worthy to understand these things more clearly.

Verse 22 and 23: *And the earth shall hear the corn and the wine, and the oil; and they shall hear Jezreel. And I will sow her unto me in the earth; and I will have mercy upon her that had not obtained mercy; and I will say to them who were not my people, Thou art my people; and they shall say, Thou art my God.* We will not go at this point into the in depth meaning of the book of Hosea in every particular for our primary subject at this point is the first seal and the Marriage is that subject. This should inspire us to look into the meaning of Hosea 3:5: *"Afterward shall the children of Israel return, and seek the LORD, their God, and David, their king, and shall fear the LORD and his goodness in the latter days".*

Joel 2:15,16: *Blow the trumpet in Zion, sanctify a fast, call a solemn assembly. Gather the people, sanctify the congregation, assemble the elders, gather the children, and those that nurse at the breasts; let the bridegroom go forth from his chamber, and the bride out of her closet.* Yes, the bride is definitely to be revealed for we know that Christ is in the Heavenly Sanctuary anticipating His Marriage of which God has spoken. Should we not eagerly ourselves be ready to accept this truth and come out of our closet and be revealed to the world as those who love Christ in truth and in righteousness.

Amos 9:11,14,15: *In that day will I raise up the tabernacle of David that is fallen, and close up the breaches of it; and I will raise up his ruins, and I will build it as in the days of old ... And I will bring again the captivity of my people of Israel, and they shall build the waste cities, and inhabit them; and they shall plant vineyards, and drink their wine; they shall also make gardens, and eat the fruit of them. And I will plant them upon their land, and they shall no more be pulled up out of their land which I have given them, saith the LORD, thy God.*

Obadiah 21: *And saviors shall come up on Mount Zion to judge the mount of Eaau; and the kingdom shall be the LORD's.*

COMMENTS AND CLARIFICATIONS

Drs. James D. Tabor and J. Phillip Arnold

David Koresh asked that his completed manuscript be given to us through his lawyer, Dick DeGuerin. Evidently he expected that we would read it with sensitivity and offer some reaction and evaluation based on our academic study of Biblical texts and our knowledge of the history of the interpretation of the Book of Revelation. The following preliminary comments will help the reader who is not technically trained in these esoteric texts to follow David's rather involved thinking and interpretation. Whatever one thinks of the Branch Davidians and their Biblical views, one can at least endeavor to understand their systematic interpretation of Scripture which they obviously found so compelling.

The key to understanding David Koresh and his perception of his identity and mission clearly centers on one question taken from the book of Revelation--"Who is worthy to open the scroll and to loose its seals?" (Revelation 5:2). The text identifies a figure known as the Lamb, or "Root [Branch] of David" who alone is able to open this mysterious book sealed with Seven Seals (5:5). Traditional Christianity has, of course, always understood this one to be none other than Jesus Christ of Nazareth. Hence the endless confusion as to whether or not David Koresh actually claimed to be "Jesus," or even God himself, for that matter. This manuscript makes it clear that he claimed to be neither, despite all the confused and misleading reports about his self-understanding. However, he certainly *did* claim to be this Lamb who opens the sealed scroll, as well as the figure who rides the White Horse when the First Seal is opened, and appears at the end of the book, still mounted on the same White Horse, when the "marriage of the Lamb" takes place (Rev 6:1-2; 19:7-19).

Part of the confusion has to do with the use of the term "Christ." This Greek word is not a name, but a title. It means "an anointed one" or to use the original Hebrew word, a "messiah." All the ancient high priests and kings of Israel were "anointed," and in that sense can be called "christ" or "messiah." This is standard Biblical usage. However, the Prophets began to focus on a specific and ideal Christ or Messiah who is to come. This one was to be a "Branch of David," that is, a descendant of King David, and would rule as a King in Jerusalem, bringing peace to Israel and all nations (Isaiah 11:1; Jeremiah 23:5). This Christ, like David of old, is also called the "Son of God" (Psalm 2:6; 2 Samuel 7:14). David Koresh clearly believed that Jesus of Nazareth was this Christ. However, he also maintained that the prophets foretold of another "Christ," a Branch of David, who would appear at the end of time and open the Seven Seals.

Psalm 45 is the key to the First Seal, according to David. Here the King is anointed, that is made "Christ," and rides his horse triumphantly (verses 1-7). This is parallel to Revelation 6:1-2 and 19:7-19--so this figure is none other than the Lamb. After conquering his enemies, the marriage feast takes place. This Lamb marries virgin "daughters" and has many children who are destined to rule with him over the earth (Psalm 45:10-17). Jesus of Nazareth, though anointed as Christ, never fulfilled this role 2000 years ago. Accordingly, David believed that Psalm 45, along with several other key Messianic texts, could not apply to this appearance of Jesus Christ of the first century. Jesus never married and had children, as this text requires. Psalm 40 also speaks of the same figure: "Then said I, Lo, I come; in the *scroll of the book* it is written of me, I delight to

do thy will, O my God, yea thy law is within my heart" (verses 6-7). The text goes on to speak of this one as having "iniquities more than the hairs of mine head" (verse 12). This so-called *"sinful messiah"* is none the less the one written of in the scroll--which David connected, obviously, to the Seven Sealed Scroll of Revelation 6.

David believed that this same figure is mentioned in Isaiah 45:1 and called by name: "Thus says the LORD, to his *anointed* (christ), to Cyrus (Koresh in Hebrew), whose right hand I have held, to subdue nations before him ..." This Cyrus, or Koresh, is called Christ. His mission is to destroy Babylon. Historians have understood the reference to be to the ancient Persian King Cyrus, who literally destroyed ancient Babylon. But there is a deeper spiritual and prophetic meaning according to David, and for that matter, the book of Revelation. The whole religious-political system is called "mystery Babylon the Great." As the text says, "Babylon is fallen, is fallen," hinting at a *double* meaning and fulfillment (Rev 18:2). The last Babylon is defeated by the last Christ/King/Koresh, the "Branch of David."

In his manuscript David barely begins to get into the many texts of the Prophets who speak of this "Davidian" figure (Jeremiah 23:5-8; 19-20; 33:14-16; Ezekiel 37:24-25; Hosea 3:5). He makes the point repeatedly that this Christ comes in the *latter* times, and perceives that Jesus of Nazareth, who came 2000 years ago, never fulfilled these texts. The Lamb who opens the Seals comes right before the End, is humiliated and maligned, and like Jesus 2000 years ago, offers the world God's truth. In other words, David is regarded as the actual, final manifestation of the Lamb, who will fulfill these prophecies regarding the Messiah.

According to this perspective, the Waco standoff and "waiting period" was a test for all humanity. It did not have to end as it did. David believed that the world was being offered a chance to listen to this last Christ/Koresh, who could open the Seals, and thus show the way of repentance to our society. There was even an opportunity given for the actual decoding of the Seven Seals in written form, to be openly shared with all who wanted to hear. This was all cut short. The rejection and death of David, at age 33, around Passover time, became a strange repetition of the past. The Fifth Seal, which allowed for a time of repentance while the message went forth, ended with the "rest killed" as they believed Rev 6:11 predicted. The Branch Davidians now believe that the probation period is up, and the Sixth Seal of the Judgment of God is pending.

The manuscript indicates that those who respond to the message of repentance, who turn to God and begin following the Law of God, through accepting the Lamb / Koresh / Christ / King, will be invited to the "Marriage" feast. They are those "elect" ones who make up the Bride of the Lamb. He concludes this chapter with the thought that those who are truly part of the "Bride" are to come out of the "closet" and be revealed for who they are.

The manuscript also carefully maintains the distinction between the God the Father and His Lamb or Messiah. In that sense David Koresh never claimed to be God. However, like the Hebrew Prophets of old, and like Jesus of Nazareth, he did claim to speak the words of Yahweh God (the Father) directly, and in that sense could use, as they did, the first person mode of discourse.

The Poem, entitled "Eden to Eden," is quite fascinating. Like Paul, David implies that the "marriage of the Lamb" is a mystery which somehow rectifies what happened at Eden in the Fall (Ephesians 5:31-32). The physical sexual union ("the two shall become one flesh") has a deeper meaning, and involves the perfect bonding of "Adam and his spirit Eve" in the "new Man" to come. David taught the importance of the feminine side of the Divine and implies that Adam was created to express this dual image. However, through sin, Adam and his descendants were separated from the spiritual, feminine side, and remain in need of restoration. Through the revelation of Christ in the person of the Lamb, people are being reunited with their fragmented selves and gathered as lovers of God for the ultimate marriage union which will restore Eden.

DAVID'S PROMISE TO "COME OUT" AND THE EVIDENCE OF THE MANUSCRIPT

What evidence is there from the manuscript that David Koresh would have kept his pledge to "come out" of Mt. Carmel, as he stated in his letter to his attorney, Dick DeGuerin on April 14th? We know that the first chapter of this work was completed on Sunday evening, the night before the fire, and was typed onto a computer disk by Ruth Riddle. This disk survived the fire, carried out by Ruth Riddle in her jacket pocket.

The existence of the manuscript itself, as well as internal evidence within the text, confirm that David was keeping his promise to produce an interpretive document. Such evidence also supports the view that David actually intended to lead his group out peacefully. A literary analysis of the text clearly shows that David was not merely "pretending" to write on the seals, and that his pledge of April 14 was not a con or sham.

An analysis of this newly-released manuscript offers three reasons to conclude that David genuinely planned to compose a full written interpretation of the Seven Seals and that he intended, upon completion, to make this work available to the public.

First, the form and structure of the manuscript indicate that David's efforts were genuine, purposeful, and tangibly productive. After conceptualizing the project over that last weekend, David dictated to his typist on Sunday evening, April 18, in one long sitting of approximately four hours. The text consists of about twenty-five double-spaced pages of coherent and organized exegesis and commentary on biblical passages. Using both deductive and inductive logic, David presents his interpretation of biblical prophecy. Although his interpretation is unique in its specific application and reference, it is similar in method and style to other well known exegetes such as Isaac Newton, Joseph Smith, Ellen G. White, J.N. Darby, C. I. Schofield, or Hal Lindsey.

The structure of the manuscript is well planned and suggests that the author took pains to organize it in such a way that it would be well-received as a readable exposition. For example, the work begins with a preface consisting of a poem written by David. The poem is entitled EDEN TO EDEN and contains fifty-two lines divided into thirteen stanzas of four lines of metered and rhyming verses.

PREPARED STATEMENT OF JAMES D. TABOR, PH.D., ASSOCIATE PROFESSOR OF RELIGIOUS STUDIES, UNIVERSITY OF NORTH CAROLINA AT CHARLOTTE

Introductory Remarks

I have attached these short introductory remarks to my own analytical overview of the Waco siege taken from my recently published book *Why Waco? Cults and the Battle for Religious Freedom in America* (Berkeley: University of California Press, 1995; co-authored with Prof. Eugene Gallagher). My perspective is that of a Biblical scholar and historian, and one who was peripherally involved in the last few weeks of the 51 day siege. I have no specialized training in the behavioral sciences, nor am I trained in the skills of crisis negotiation. My academic field is ancient Biblical and apocalyptic texts within the history of early Christianity and ancient Judaism, my speciality is the Dead Sea Scrolls.

My intentions, and those of my colleague Dr. Phillip Arnold, in offering our expertise to the FBI, were singular and resolute: to see the tragic situation that developed on February 28th resolved peaceably with no further loss of life. Our essential aim was to enter into the complex and technical Biblical world-view that Koresh and his followers inhabited, to try to listen and make sense of his stream of Biblical rhetoric, and to identify all possible variables in what appeared to be a "set" apocalyptic scenario that would inevitably lead to disaster and further death.

David Koresh, whether understood as con man, "cult" leader, psychotic, or messiah, operated within his own elaborate system of Biblical symbols and codes. Indeed this was his claim to fame and the key to his hold upon his followers. They all uniformly report that they had become unalterably convinced of Koresh's prophetic role as a final "Christ" figure because he alone could unravel the complexities of the entire Scriptures, particularly the obscurities of the Biblical prophets and the mysterious Seven Sealed book of Revelation. As the Davidians often put it: if the Bible is true, then Koresh is who he claims to be. Those who had become schooled in Koresh's teachings, through hundreds of hours of meticulous, verse by verse, Bible study, had come to equate leaving the group with leaving God, rejecting the Bible, and abandoning the truth. Steve Schneider expresses this continually to the FBI negotiators, as we can now hear on the negotiation tapes, in hour after repetitive hour of con-

versations. David's ability to explain the Scriptures was Steve's anchor and his sail, even though he exhibits genuine doubts and uncertainty along the way. Koresh's hold on his followers was not that of the stereotypical charismatic "cult" leader, with irresistible, mesmerizing, powers of personality. He could be friendly, engaging, and resolute in attracting his followers, but first and foremost they became deeply immersed in the complexities of the Biblical prophets.

Dr. Arnold and I maintain that Koresh himself, whatever his complex of motives for his refusal to come out of Mt. Carmel, was operating first and foremost within this closed world of Biblical exposition. Accordingly, any effective communication with him or his followers would have to be from within that framework. Pressure tactics, threats, "stress escalation," would all in the end prove futile and even counter-productive, confirming to the group that those outside were indeed the prophesied enemy, and that the "time of the end" had arrived.

As things appeared to us in late March, a peaceful resolution of the Mt. Carmel standoff, if one were even possible, would rest on a combination of three factors: a trustful relationship between those inside Mt. Carmel and the FBI negotiators; a resolution of the legal issues involved in effecting an exit; and an alternative Biblical apocalyptic scenario that would allow for interpretive flexibility—or, to put it in Davidian terms—a postponement of the "Fifth Seal." The negotiation tapes reveal that any number of the negotiators, even up to the end, did develop, with David, Steve, and others, a relatively positive relationship of trust. By Passover, through the dogged efforts of Dick DeGuerin and Jack Zimmerman, the legal hurdles had also been largely overcome.

On April 4, just before Passover, DeGuerin and Zimmerman had carried into Mt. Carmel a taped communication from Arnold and me intended for Koresh and his followers, in which we tried to gain his trust, offer a respectful hearing of his prophetic views, and offer in the most subtle way alternative interpretive possibilities. We particularly argued that this confrontation did not have the marks of the "end," based on his own Biblical prophetic scheme. We maintained that the very texts he focused on allow more time, and that if the people of God were to finally confront an evil governmental system this was not the place or the time. We also stressed that although Koresh had the eyes of the world upon him, he was known as a "cult" leader, an abuser of children and minors, and a stockpiler of illegal arms, and surely not as someone who had something significant to say from the Scriptures. We urged him to separate the "man" from the "message," allowing the legal system to deal with what happened on February 28th, but otherwise communicating his message, possibly putting it in writing, so those who were willing could give it a fair hearing. For Koresh, whether con man or messiah, his "message" was primary. It was the key to his self-identity, to his hold upon his followers, and all that would potentially transpire at Mt. Carmel.

True to his word, the day after Passover (an eight day festival), on Wednesday, April 14, Koresh announced his formal exit plan and sent out what he clearly understood to be a signed written agreement to his lawyer Dick DeGuerin (copy attached). He was going to write his message, deliver it to me and to Dr. Arnold, and allow the courts to deal with what he calls "the bizzarity of me in the flesh." It was a workable plan, the first real breakthrough during the siege, and it was dependent on two main things: that the FBI not play the part of "Babylon" by moving in with any kind of assault, and that David be allowed the time to complete his task. One should understand that within the Davidian Biblical sytem, *writing* the message of the seals was an awesome task, only to be done with the permission of God, as Revelation chapter 10 makes clear. We now know, through the negotiation tapes of those last three days, and the computer disk containing Koresh's first chapter of his treatise, that survived the fire, that he went to work immediately. It is obvious in the tapes that he felt the situation was resolved, that an agreement had been reached, and that the negotiators were going along with the plan, though urging him to move quickly.

Monday morning, April 19th, changed all that. Obviously one does not write a Biblical exegesis, nor follow the exit plan worked out with his lawyers the previous two weeks, when CS gas is being inserted by tanks into the building. Given the world-view of Koresh and his followers, the actions of the FBI determined that they would conclude that God was not allowing them more time, that the treatise was not to be written, and that the prophesied "end" was indeed upon them. What is doubly tragic is that throughout those final days, while Koresh was lightheartedly talking with the negotiators about his agreement and work on the manuscript, and even receiving their active encouragement, Janet Reno was asking those in Washington involved in the final decision: is there any argument for waiting? Apparently she was never given any clear exposition of this legal and theological "breakthrough," signed and sealed by David Koresh on Wednesday, April 14th. Based on the surviving first chapter of Koresh's work, now published in an appendix to my book, *Why Waco?*, we estimate his entire exposition would have taken another week to ten days. Surely such a wait was worth the lives of the innocents, and following up on the only real breakthrough in 51 days was worth trying. What distinguished this possibility was that it reflected both the legal *and* the theological realities of the situation, as perceived by the Branch Davidians. If a peaceful resolution was possible, it would only come in such a way—in keeping with the Biblical world the Branch Davidian community inhabited.

April 14, 1993

Hello Dick,

As far as our progress is concerned, here is where we stand: I have related two messages, from God, to the F.B.I.; one of which concerns present danger to people here in Waco.

I was shown a fault line running throughout the Lake Waco area. An angel is standing in charge of this event. Many people, here in Waco, know that we are a good people, and yet, they have shown the same resentful spirit of indifference to our "warnings of love."

I am presently being permitted to document, in structured form, the decoded messages of the Seven Seals. Upon the completion of this task, I will be freed of my "waiting period." I hope to finish this as soon as possible and to stand before man to answer any and all questions regarding my actions.

This written Revelation of the Seven Seals will not be sold, but is to be available to all who wish to know the Truth. The Four Angels of Revelation 7 are here, now ready to punish foolish mankind; but, the writing of these Seals will cause the winds of God's wrath to be held back a little longer.

I have been praying so long for this opportunity; to put the Seals in written form. Speaking the Truth seems to have very little effect on man.

I was shown that as soon as I am given over into the hands of man, I will be made a spectacle of, and people will not be concerned about the truth of God, but just the bizarrity of me - the flesh (person).

I want the people of this generation to be saved. I am working night and day to complete my final work of the writing out of "these Seals."

I thank my Father, He has finally granted me the chance to do this. It will bring New Light and hope for many and they will not have to deal with me the person.

The earthquake in Waco is something not to be taken lightly. It will probably be "the thing" needed to shake some sense into the people. Remember, Dick, the warning came first and I fear that the F.B.I. is going to suppress this information. It may be left up to you.

I will demand the first manuscript of the Seals be given to you. Many scholars and religious leaders will wish to have copies for examination. I will keep a copy with me. As soon as I can see that people, like Jim Tabor and Phil Arnold have a copy I will come out and then you can do your thing with this Beast.

I hope to keep in touch with you by letter, so please give your address.

We are standing on the threshold of Great events! The Seven Seals, in written form are the most sacred information ever!

David Koresh

David Koresh

Why Waco?

Cults and the Battle for Religious Freedom in America

James D. Tabor
and
Eugene V. Gallagher

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ONE

What Might Have Been

THE FBI AGENTS CALLED to Mount Carmel center outside Waco, Texas, on February 28, 1993, can hardly be expected to have packed their Bibles. In retrospect, it would not have been such a bad idea. The news of the bloody shoot-out between agents of the Federal Bureau of Alcohol, Tobacco, and Firearms (BATF) and an obscure religious group known as the Branch Davidians, on the peaceful Sunday morning had been flashed around the world.[1] For months the BATF had planned a "search and arrest" assault on the group based on allegations that they possessed illegal firearms materials and were possibly converting AR-15 semiautomatic rifles into machine guns. At 7:30 A.M. an eighty-vehicle convoy, including two cattle trailers pulled by pickup trucks loaded with seventy-six heavily armed BATF agents, had made its way to a staging area a few miles from the rural Mount Carmel property. Shortly after 9:00 A.M. the assault began. The two cattle trailers drove rapidly up to the property, halted in front, and the BATF agents stormed the center. Over head two Blackhawk helicopters arrived simultaneously. Local newspaper and television people, who had been alerted to the raid, watched and filmed from a distance. On Saturday, the previous day, the *Waco Tribune-Herald* had begun to publish a dramatic front-

page series called "The Sinful Messiah," which alleged that the "cult" and its leader, David Koresh, were guilty of bizarre sexual practices, child abuse, and paramilitary activities.[2]

Who fired the first shot that morning is disputed. David Koresh, the leader of the Branch Davidians, claimed that he went to the front door and shouted to the arriving agents, "Get back, we have women and children in here, let's talk," only to be cut off by a burst of gunfire.[3] The BATF claims that they tried to identify themselves, shouting to Koresh that they had a warrant, but were met with a hail of bullets.[4] Later, in the 1994 San Antonio trial of eleven Branch Davidians on charges of conspiracy to murder, it came out that the BATF had planned a "dynamic entry" with no realistic contingency for a peaceful serving of the search warrant.[5] A few minutes into the raid, the Branch Davidians called their local 911 number, demanding that the attack cease. By noon a cease-fire had been arranged. The BATF claims they were ambushed and outgunned by the Branch Davidians, who had known they were coming. The Branch Davidians maintain that their resistance was minimal and in self-defense, and that their 911 call demonstrated their nonconfrontational stance on that day. A standoff ensued, with Koresh and his followers inside refusing to surrender. Within hours the major television and print media had arrived, and the FBI was called in. For the next fifty-one days the situation at Waco dominated the news. David Koresh had instantly become a household name, and the public was hungry for information about this obscure thirty-three-year-old Bible-quoting Texan and his followers.

It all ended on Monday, April 19. Just after 6:00 A.M., two specially equipped M-60 tanks began to strategically punch holes into the Mount Carmel structure and insert CS gas in an effort to force the Davidians out. The wind was high that day, and most of the tear gas seemed to blow away. Over the next six hours the operation was stepped up, and four Bradley vehicles joined the tanks, firing 40 mm canisters of gas through the windows. A loudspeaker blared, "David, you have had your 15 minutes of fame. . . . Vernon [Koresh's given name] is no longer the Messiah. Leave the building now. You are under arrest. This standoff is over."[6] Around noon, smoke was seen

coming from the second-story windows, and within minutes the thin frame building was engulfed in an uncontrollable fire, fanned by the gusty winds. The entire scene was carried live to the world over television satellite. Only nine Davidians were able to escape the fire. The bodies of most of the women and children were found huddled together in a concrete storage area near the kitchen, where they had apparently been trapped by falling debris.

The Waco operation turned out to be one of the most massive and tragic in the history of United States law enforcement.[7] In the initial raid, four BATF agents were killed and twenty wounded, while six Branch Davidians were fatally shot, with four others wounded.[8] The Branch Davidians inside the rambling Mount Carmel complex following the raid numbered approximately 123 persons, including 43 children. They were heavily armed and solidly behind their leader. On April 19, when it all came to a fiery end, 74 Branch Davidians were listed dead, including 21 children under the age of fourteen.[9] In the aftermath BATF director Stephen Higgins and five other high-ranking officials resigned from the agency.[10]

On the very evening following the initial Sunday raid by the BATF, Koresh, who had been seriously wounded, spoke several times by live telephone hookup over Dallas radio station KRLD and CNN cable television. Koresh began, in those gripping interviews, the first of hundreds of hours of explanations, based on his understanding of the biblical apocalyptic significance of the situation in which he found himself. His last direct communication with anyone other than government agents was an impromptu conversation with the station manager Charlie Serafin over KRLD radio at 1:50 A.M. the next morning.[11] In those live broadcasts Koresh offered the key to the Branch Davidians' biblical understanding of events. Unfortunately, neither the FBI agents in charge nor the myriad of advisers upon whom they relied could comprehend their perspective.

By that Monday morning, March 1, the FBI had already been called in and was in the process of taking over operations from the BATF. FBI Special Agent Jeff Jamar, from San Antonio, Texas, had taken command of the situation. The FBI fifty-person Hostage Rescue Team (HRT), a counterterrorist unit, was arriving. The situation

was categorized by the FBI on this very first day of the siege as a "complex Hostage/Barricade rescue situation" even though the FBI recognized that many of the elements typically present in hostage situations were lacking. As the FBI itself later noted, "Koresh had made no threats, set no deadlines, and made no demands. Koresh and his followers were at Mount Carmel where they wanted to be and living under conditions that were only marginally more severe than they were accustomed to."[12] Nonetheless, negotiators and tactical personnel were called in, SWAT teams were put in place, and a method of dealing with the Branch Davidians was initiated, which was basically followed for the next fifty days—leading to the tragedy on April 19.

Listening carefully to what Koresh said in those live interviews over KRLD and CNN, a person familiar with the biblical texts could have perceived the situation in wholly different terms from the government's "hostage rescue." For the Branch Davidians, no one was a hostage. The only "rescue" they needed was from the government itself. In their view, the federal agents represented an evil government system, referred to in the book of Revelation as "Babylon." The idea of "surrendering to proper authority," as the government demanded throughout the next seven weeks, was absolutely out of the question for these believers unless or until they became convinced it was what God willed. As they saw it, their group had been wantonly attacked and slaughtered by government agents whom they understood to be in opposition to both God and his anointed prophet David Koresh. Their fate was now in God's hands.

The Waco situation could have been handled differently and possibly resolved peacefully. This is not unfounded speculation or wishful thinking. It is the considered opinion of the lawyers who spent the most time with the Davidians during the siege and of various scholars of religion who understand biblical apocalyptic belief systems such as that of the Branch Davidians.[13] There was a way to communicate with these biblically oriented people, but it had nothing to do with hostage rescue or counterterrorist tactics. Indeed, such a strategy was being pursued, with FBI cooperation, by Phillip Arnold of the Reunion Institute in Houston and James Tabor of the

University of North Carolina at Charlotte, one of the authors of this book. Arnold and Tabor worked in concert with the lawyers Dick DeGuerin and Jack Zimmerman, who spent a total of twenty hours inside the Mount Carmel center between March 29 and April 4, communicating directly with Koresh and his main spokesperson, Steve Schneider. Unfortunately, these attempts came too late. By the time they began to bear positive results, decisions had already been made in Washington to convince Attorney General Janet Reno to end the siege by force. As we will show, those officials briefing her had decided on the CS gas option and were determined to get her approval, despite her caution and better judgment.

In the KRLD radio conversations that first evening, the station manager urged Koresh to surrender and get medical attention. Since ten children had already come out, he was repeatedly asked whether he would allow more children to leave. In response, Koresh launched into a detailed message, quoting Scriptures and explaining his view of the situation. Most likely, his message was largely incomprehensible to the station manager and to much of the radio audience. Koresh was a master at his own form of biblical exposition and exegesis. From the theological perspective of the Branch Davidians, his message was highly systematic, rigidly consistent, and internally "logical"; to those unfamiliar with the prophetic portions of the Bible, however, the message, delivered in his typical nonstop style with lengthy quotations from the King James Version, surely must have seemed nonsensical. Among the many points he made in those initial conversations on KRLD, one stands out as particularly vital. "We are now in the Fifth Seal," he told his live audience—a cryptic reference to the book of Revelation.

The FBI negotiators spoke mostly with Schneider and Koresh in extended telephone conversations on the private line they had connected.[14] The Department of Justice report indicates that the conversations with Koresh were often two- or three-hour monologues in which Koresh attempted to teach them his biblical interpretations. Although the tapes of these "negotiations" have not been made public, the liberal samples quoted in the Department of Justice report give a fair idea of the style and content of Koresh's communications

with the authorities. The FBI notes that his delivery of "religious rhetoric was so strong that they could hardly interrupt him to discuss possible surrender."[15] The report constantly laments that Koresh "refused to discuss any matters of substance" and merely insisted on "preaching" to negotiators.[16] What the authorities apparently never perceived is that Koresh's preaching was to him and to his followers, the *only* matter of substance and that a "surrender" could only be worked out through dialogue within the biblical framework in which the Branch Davidians lived.

In reading through the Department of Justice log of events, one detects early on a developing sense of frustration in dealing with Koresh. On March 5, the FBI agent in charge, Jeff Jamar, had summarized Koresh's position quite succinctly: "His stance is still that he's been told to wait, and when he gets the message to stop waiting, then we'll proceed from there." Indeed, on that same day, Jamar himself stressed that federal authorities were prepared to wait "as long as necessary to get Mr. Koresh and his followers out of the complex without violence, regardless of the time or expense."[17] This was in keeping with President Clinton's understanding that the FBI's philosophy was to "negotiate until the situation was resolved."[18]

Nonetheless, just over a week later, on March 15, the FBI agents in charge began to initiate an abrupt change in policy. Termed a "modified negotiation strategy," this new approach called upon the negotiators to be firm and to insist on peaceful surrender, but to refuse to listen any longer to what they now called Koresh's "Bible babble."[19] This shift in policy effectively sealed off any possibility of sympathetic communication between Koresh and the government negotiators. It deprived Koresh of the only means of communication he valued, namely his own biblical interpretation of what was unfolding. And just five days later—over one month before the April 19 fire—they began to discuss the CS gas option privately.[20]

At about the same time, the FBI began its "stress escalation" and harassment techniques. As early as March 9, a series of pressure tactics was initiated. For example, the electricity to Mount Carmel were temporarily, and later permanently, cut off. These tactics were expanded and intensified over the next few weeks. The pattern was

that the FBI would demand that Koresh send out some of his people, the demand would be rejected, and the government would then retaliate with punitive measures. Searchlights kept the property brightly lit through the night, irritating noises and loud music were blared over large speakers, and vehicles and personal property of the Davidians were crushed or removed by armored vehicles. The FBI saw the situation as stalemated. They had little hope that Koresh would allow more children out. Those who were inside apparently intended to stay. All the while Koresh insisted that he would not exit until he received his "word from God."

As we mention earlier, Koresh and his followers had been labeled a "cult" and thoroughly "demonized" in a series of articles called "The Sinful Messiah" printed in the *Waco Tribune-Herald* beginning on February 27, just one day before the BATF raid. This series, based largely on charges by disaffected former Branch Davidians, painted a grim and bizarre picture of Koresh and his followers, echoing all the stereotypes the public had come to associate with unfamiliar groups or new religious movements that are pejoratively labeled "cults." Hungry for any "information" about this heretofore unknown religious group, all the major print, radio, and television media had snapped up this material the day of the February 28 raid. The FBI apparently shared and certainly tried to perpetuate the public perception of Koresh, charging that he was a power-mad, sex-crazed "con man" who constantly made up and changed the rules as things unfolded. They maintained that his word was completely unreliable, pointing to his broken promise to exit Mount Carmel on March 2, following the broadcast over radio of a fifty-eight-minute message he had recorded. After his default on March 2, two days after the BATF raid, however, Koresh stuck irrevocably to his position: God had told him to wait. No matter how hard the authorities pressed Koresh or his followers, demanding that they surrender and come out, the reply was the same: the group would not come out until Koresh received his "word from God." The potential horror of the situation was that if the group perceived itself to be "in the fifth seal," might they not unwittingly, or even willfully, orchestrate their own deaths in order to fulfill this prophecy of martyrdom?

Koresh talked most, almost incessantly, throughout the fifty-one days about the Seven Seals of the book of Revelation. Inseparable from his view of these Seven Seals was his understanding of himself as the unique messianic figure, sent by God to reveal the hidden meaning of the entire biblical prophetic corpus. This was clearly Koresh's primary theme. He would constantly challenge anyone, particularly the ministers and preachers of Christianity, to "prove him wrong" on the Seven Seals or to match him in expounding their hidden meaning.

In its opening chapters the book of Revelation describes a scene in which a mysterious book or scroll sealed with seven wax seals is introduced. The question is then raised: "Who is worthy to open this sealed book?" Koresh understood the sealed book to be the entire Bible, particularly the prophetic writings. Accordingly, to open the book is not only to explain it but also to orchestrate the events it sets forth, leading to the climax of human history, the end of the world. According to the book of Revelation, only one person can open this book, a figure called "the Lamb," whom Christians have always understood to be Jesus of Nazareth. Koresh, however, had an elaborate set of arguments to demonstrate that a figure other than Jesus was intended here, a second Christ, or Messiah, whom Koresh claimed to be. This second Messiah he found prophesied in many passages in the Bible, but particularly in the Psalms and in Isaiah, where he is called "Koresh," the Hebrew name for Cyrus, the ancient king of Persia who conquered Babylon. David Koresh, born Vernon Howell, claimed to be this special figure, sent before God's final judgment upon the world to open the Seven Seals of the book of Revelation and thus reveal to the world the full mysteries of the entire Bible.

When Koresh spoke about being "in the fifth seal" the day of the BATF raid, he was referring to his particular understanding of a sequence of events to unfold before the end, which he also connected to a host of related texts throughout the Bible. What is operating here is a series of interpretive dynamics, well known to scholars of Jewish and Christian apocalypticism, which have played themselves out countless times in the past twenty-five hundred years.[21] Biblical

apocalypticism involves the interplay of three basic elements: (1) the sacred Text, which is fixed and inviolate; (2) the inspired Interpreter, who is involved in both transmitting and effecting the meaning of the Text; and (3) the fluid Context in which the Interpreter finds himself or herself. The Text functions as a "map" of things to come, setting forth an "apocalyptic scenario" of End Time events. Koresh's Text was of course, the entire Bible, particularly the books of Daniel, Revelation, the Psalms, Isaiah 40–61, and the Minor Prophets, which he had woven into a complex prophetic sequence of events that had deeply impressed his followers and convinced them he was a prophet himself.

Although the Text itself is fixed and unchanging, setting forth in advance what "must happen," there are two variables in this scheme of things, allowing for a high degree of flexibility. First, the Interpreter is interpreting the Text and the Context, or outside events. And further, outside events are always changing. In our view this was an important key to effective negotiations during the entire fifty-one-day standoff at Mount Carmel. The government largely controlled the Context, or outside situation, and therefore unknowingly possessed the ability to influence Koresh in his interpretations and thus in his actions. Unfortunately, the standard negotiation strategies and tactical maneuvers associated with complex Hostage/Barricade rescue situations confirmed Koresh in his initial perception of the events of February 28—that they were "in the fifth seal" and that the entire situation might well end tragically. In other words, the FBI unwittingly played the perfect part of Babylon throughout, validating in detail Koresh's interpretations of Scripture.

The Fifth Seal of the book of Revelation is chilling in its potential implications for the situation at Waco: "And when he had opened the fifth seal, I saw under the altar the souls of *them that were slain* for the word of God, and for the testimony which they held; and they cried out with a loud voice, saying, How long, O Lord, holy and true, dost thou not judge and avenge our blood on them that dwell on the earth? And white robes were given unto every one of them; and it was said unto them, that *they should rest yet for a little season, until their fellow-servants also and their brethren, that should be*

killed as they were, should be fulfilled" (emphasis added). (Rev. 6:9–11) This Fifth Seal takes place shortly before the cosmic judgment of God, the great day of the Lord's wrath, which is to be revealed by a massive earthquake and various heavenly signs, introduced by the Sixth Seal (Rev. 6:12–17). In other words, it is the last major event leading to the end of human history. The text speaks of some of the faithful being slain, followed by a waiting period before the rest are killed. Koresh connected this with Psalm 2, which tells of a final confrontation between the "kings of the earth" and an anointed one, or "messiah." Based on this possible interpretation of events, the killing had begun on February 28. From the Branch Davidian point of view, those six who had been killed had died for no other reason than they were studying the Bible with David Koresh and thus were branded as part of a "cult"; they gave their lives "for the word of God, and for the testimony which they held," which is precisely what the book of Revelation prophesies. Accordingly, the group believed it was to *wait* for a "little season" until the rest would also be slain. The martyrdom of those remaining inside Mount Carmel would lead to the Sixth Seal, which would bring about the judgment of God on the world. As long as the Context outside continued to cause Koresh and his followers to believe that the fulfillment of this Fifth Seal was upon them, they viewed their impending death as inevitable.

It is obvious that Koresh himself was confused by the events that had transpired. His prophetic scenario did require fulfillment of this Fifth Seal, but Koresh had taught for years that it would happen in Jerusalem, in the land of Israel. Further, from their calculations of the End Time the group was expecting the final confrontation to come in 1995, not in 1993. Koresh had told his followers that, as the final Christ figure, he would inevitably be required, at some point, to die in a battle. The latter verses of Psalm 89, which Koresh mentioned on the day of the initial BATF raid, predict just such a fate for this Davidic figure. However, beginning in 1990, and particularly following the Gulf War in 1991, Koresh had speculated that at least a portion of these final events might take place in Texas rather than Israel.[22]

Koresh's uncertainty about whether or not the BATF raid presaged such a scenario offered the best hope for a peaceful resolution of the situation. In the February 28 KRLD radio conversation, the station manager asked Koresh how he felt about the BATF agents that had been killed and wounded. He answered emphatically, "My friend, it was *unnecessary.*" He went on to say that the whole thing was regrettable, that innocent lives had been lost, and that he would have submitted to any governmental investigation of the weapons he had purchased. Indeed, nearly a year earlier, in July 1992, when BATF agents had questioned the Waco gun dealer Henry McMahon in their initial investigation of the Branch Davidians, Koresh had actually invited them to Mount Carmel to talk and later faxed copies of his arms purchase receipts to McMahon to assist him in responding to the BATF inquiry.[23] In the KRLD conversation Koresh described his cordial relationship with the local McLennan County sheriff Jack Harwell and other law enforcement officers, including the undercover BATF agent Robert Rodriguez, who had tried to infiltrate the group earlier that year. The 911 tapes, made on the same day, within minutes of the BATF raid, also reveal a panicked group inside Mount Carmel who desperately wanted the authorities to back off. On March 7 the group recorded a one-hour video of Koresh with his wives and children. In this video Koresh addresses the federal authorities in a most accommodating manner, stating his desire to resolve the situation peacefully, while still sharply blaming them for initiating the entire encounter. At the end of the tape he says, "Hopefully God will grant us more time."

These actions indicate that Koresh did not see the February 28 confrontation as an inevitable fulfillment of the final prophetic scenario that he had proclaimed to his followers in such detail. Some events did not match; the outcome was open ended and still to be determined. Yet he had been wounded, people had been killed, and he was now confronted by official agents of the United States government, whom Adventists had historically identified as the leader of the Babylonian system that Christ defeats in the book of Revelation (17–18). It is clear from conversations with surviving Branch Davidians who were inside Mount Carmel that the group feared that the

overwhelmingly superior government forces might force their way in and kill them all at any moment. Koresh was convinced that the attack on February 28 was related to the final sequence of events foretold in the Bible, but, given these ambiguities, he was uncertain of what he was to do. Although the apocalyptic Text was fixed, like a script written in advance, the Interpretation and the precise Context were variable. Koresh was waiting because he believed that God had told him to do so and because he understood a waiting period to be required by the "fifth seal." In the meantime he was seeking his "word from God," which would clarify the ambiguities and uncertainties inherent in the changing outside situation.

On Friday, March 19, a significant event occurred that the group interpreted as the sign for which they had been waiting. The Branch Davidians were able to listen to local radio stations on transistor radios despite their electricity being cut off. Paul Harvey had mentioned a "guitar-shaped nebula" on his national radio news report. Koresh was extremely excited about this report, thinking that it might well be one of the "signs" from God that he was looking for. He discussed it with the FBI negotiators and later claimed that it was "his sign" sent by God to draw the world's attention to what was happening.[24] According to the Gospels, Jesus had predicted that shortly before the end such heavenly signs would appear.[25] The Davidians were particularly impressed that this comet had been described as having a guitarlike shape, since Koresh had always understood his role as a guitar player in his rock band to be an integral part of his prophetic mission. The surviving Davidian David Thibodeau, who was the drummer in the band, reports that Koresh and all the Davidians were deeply moved by what they understood to be the clear correspondence between this rare heavenly sign and their situation.[26] Obviously, Koresh and his followers were anxious to see some indication from God, some supernatural manifestation, that would confirm them in the course they had taken. This also comes out in the series of letters Koresh sent out during the final week of the siege. In his last letter he actually predicts an earthquake to occur in the Waco area. These elements of his thinking indicate that the

situation was much more flexible than one might have supposed and that Koresh's insistence upon waiting for a word from God suggested fluidity and open options rather than intransigence.

Phillip Arnold and James Tabor offered their services to the FBI on March 7.[27] As biblical scholars they specialized in the history of biblical apocalyptic interpretation and were generally familiar with Adventist groups although neither had ever heard of David Koresh and the Branch Davidians before February 28. They studied carefully the fifty-eight-minute tape that Koresh had released on March 2 and began many hours of theological conversation over the telephone with Livingstone Fagan. Fagan had been sent out of Mount Carmel by Koresh on March 23 to act as a theological spokesperson for the Davidians; he was now being held in jail in Waco on charges stemming from the February 28 BATF raid. He holds a graduate degree in theology and is an articulate defender of Koresh's teachings. Tabor and Arnold began to grasp the details of Koresh's teachings. Their intentions in approaching the FBI were twofold: First, they offered to help the negotiators to interpret the complexities of books like Daniel and Revelation, as understood by the Branch Davidians. But even more important, they wanted to communicate with Koresh directly, offering him sympathetic and informed response to his apocalyptic interpretations. Their goal was to build upon the ambiguity that they knew he already felt about his situation. Fagan had stressed to them that from the Davidian viewpoint the outcome of the crisis was completely opened-ended and undetermined. According to Fagan, what would transpire depended on how the government authorities responded to Koresh's efforts to communicate his biblical faith. Fagan saw the Mount Carmel siege as a kind of spiritual trial, or test, for our culture, to determine whether or not we would listen to God's final messenger. Tabor and Arnold hoped to build on this point with Koresh, emphasizing that given his interpretation of the Bible, right or wrong, one might not necessarily understand the standoff at Waco as a fulfillment of the penultimate End Time scenario. It was clear that Koresh desperately wanted the FBI to recognize his skill and wisdom in the Scriptures. His preaching to the

negotiators was a monologue, because none of them was equipped to discuss the many texts that Koresh brought up and no substantive dialogue ensued.[28]

In early March, Arnold had done short interviews over Dallas radio stations KRLD and KGBS, discussing the book of Revelation and its relevance to how the Branch Davidians understood the situation at Mount Carmel. These broadcasts had attracted the attention of Koresh and Schneider who were able to listen on their battery-powered transistor radios. On March 16, they made a formal request that they be allowed to discuss the Bible with Arnold. The FBI denied their request but allowed tapes of the radio interviews with Arnold to be sent into Mount Carmel.[29] Encouraged by this positive response, Arnold and Tabor began to formulate a more carefully worked-out plan to communicate with Koresh. Ron Engleman, host of a daily talk show over station KGBS, had shown sympathy toward the Branch Davidians from the day of the initial BATF raid. His program was faithfully followed by those inside Mount Carmel.[30] On April 1, Arnold and Tabor spoke on Engleman's show and discussed in some detail the prophetic technicalities of the Waco situation as it might be viewed by the Branch Davidians. Although this program took the form of a dialogue between Arnold and Tabor, it was deliberately pitched for the ears of Koresh and his followers and was designed to show that someone outside was listening and capable of discussing the book of Revelation on a level the Davidians could appreciate. David Thibodeau, who was inside, remembers that this program created a very favorable response.[31] Around this time Arnold had also spent many hours with Dick DeGuerin, Koresh's attorney, who was meeting daily with Koresh inside Mount Carmel. DeGuerin reported that Koresh wanted most to discuss the Bible, and Arnold tried to lay out for him the religious framework of his client. On April 4, just before Passover, the FBI allowed a tape of this radio discussion to be taken into Mount Carmel by Dick DeGuerin and given directly to Koresh. This was the last face-to-face contact anyone from the outside had with those who died inside Mount Carmel.[32]

On April 14, following the eight-day Passover celebration of the Davidians,[33] and just four days before the FBI gas attack and resulting fire, Koresh received his long-awaited "word from God." According to survivors of the fire, he had spent the prior Passover week in deep prayer and meditation, seeking an answer to his question as to what God expected him to do. On that day, a Wednesday, Koresh released a letter addressed to his lawyer, Dick DeGuerin, which would be his final communication to the outside world. In it he joyfully announces that the group will come out as soon as he finishes writing his basic message on the Seven Seals and sees that it is delivered to Arnold and Tabor. In part the letter reads:

> I am presently *being permitted* to document, in structured form, the decoded messages of the Seven Seals. Upon completion of this task, I will be *free of my "waiting period."* I hope to finish this as soon as possible and to stand before man to answer any and all questions regarding my actions.
>
> This written Revelation of the Seven Seals *will not be sold,* but is to be available to all who wish to know the Truth. The Four Angels of Revelation are here, now ready to punish foolish mankind; but, the writing of these Seals will cause the winds of God's wrath to be held back a little longer.
>
> I have been *praying so long* for this opportunity; to put the Seals in written form. Speaking the Truth seems to have very little effect on man.
>
> I was shown that as soon as I am given over into the hands of man, I will be made a spectacle of, and people will not be concerned about the truth of God, but just the bizarrity of me in the flesh.
>
> I want the people of this generation to be saved. *I am working night and day to complete my final work* of the writing out of these Seals.
>
> I thank my Father, He has finally *granted me the chance* to do this. It will bring New Light and hope for many and they will not have to deal with me the person.
>
> I will demand the first manuscript of the Seals be given to you [Dick DeGuerin]. Many scholars and religious leaders will wish to

> have copies for examination. I will keep a copy with me. As soon as I can see that people like Jim Tabor and Phil Arnold have a copy *I will come out* and then you can do your thing with this beast.[34] (Emphasis added.)

This letter is invaluable as a reflection of Koresh's personal piety and his apocalyptic way of thinking. He speaks of receiving permission to write out his message of the Seven Seals. In his understanding of things, this point is of supreme significance. Indeed, as he now saw it, the time had arrived, at long last, for the mysteries of the book of Revelation, which had been revealed to him in 1985, to be given to the world. In Revelation 10, an angelic figure is told to "seal up" and not write the mysteries of seven "thunders," which are equivalent to the events of the Seven Seals. Yet this figure has in his hand a "little book," and he is given all the "mystery of God as declared to the prophets." This messenger, whom Koresh claimed to be, is subsequently told, "You must prophesy *again* before many people, nations, and tongues, and kings" (emphasis added). Arnold and Tabor had discussed this passage in detail in their April 1 tape. They knew that he claimed to be this very figure in Revelation 10. They pointed out to him that, although his name was now a household word and he had been on the cover of *Time* and *Newsweek* and he was mentioned hourly in CNN news reports, all the public knew about him were the charges of child abuse, sexual molestation of minors, and a myriad of other bizarre practices widely reported by the media. The figure in Revelation 10 has a "little book," which apparently contains the sealed message; yet at some point this messenger is told to go to the world at large with the message. Arnold and Tabor had stressed that no one outside Mount Carmel understood his central claim—the meaning of the Seven Seals. His letter clearly responds to the major points they had raised in that tape. He now wanted to separate what he calls the "bizarrity [*sic*] of me in the flesh" from his message of the Seven Seals, and he was ready to "stand before man to answer any and all questions" regarding his behavior.

The FBI apparently failed to recognize that according to this letter, Koresh had finally received his word from God. He clearly says that

his "waiting period" will be over once he completes this manuscript on the Seven Seals. The FBI immediately responded to this latest breakthrough with ridicule. They joked about Koresh, the high-school dropout, writing a book and labeled Koresh's "word from God" nothing more than another "delay tactic" to prolong the agony of the siege for his own purposes. The daily chronology log in the Department of Justice report does not even mention this letter of April 14; it merely notes that "David had established a new precondition for his coming out."[35] The Arnold-Tabor audiotape is never mentioned either. From the Department of Justice report, it appears that nothing was working, that all negotiations had failed, and that the government had one alternative—the CS gas attack. In fact, the only strategy that seemed promising was that of a dispassionate, reasoned dialogue based on the prophecies of the Bible, coupled with the legal arrangements for surrender worked out by the attorneys DeGuerin and Zimmerman.[36] Unfortunately, by that time the government authorities on the ground in Waco were exasperated and had already decided to move with force. Although some in the FBI's inner circles of advisers argued for continued negotiation and more time, on the whole the government did not trust Koresh and considered him insincere and manipulative.[37] Koresh had promised to come out on March 2 when the authorities agreed to have his fifty-eight-minute "message" played over radio but had gone back on his word. Subsequent indications that he would soon exit proved unfounded. This latest letter was seen as another ploy. The FBI asked Murray Miron of Syracuse University to examine this and four other letters sent out the previous week. Miron concluded that the letters bore "all the hallmarks of rampant, morbidly virulent paranoia."[38] In fact, the other four letters consisted mostly of scriptural quotations related to Koresh's understanding of the situation. If Miron had had any training in Scripture, or in the long history of apocalyptic interpretation, he would have recognized that those texts were a kind of code mapping out the perspectives of the group in biblical language. Miron so seriously misunderstood this vital April 14 letter that he apparently thought the mention of the names Tabor and Arnold had to do with book rights, as if they were literary agents and

Koresh were interested in cutting a deal with them, despite the fact that Koresh insists that his manuscript is not to be sold. The FBI summary of Miron's findings on this "fifth letter" echoes this serious failure to comprehend the situation: "With regard to the fifth letter, Dr. Miron noted that the letter appeared to be a ploy designed to buy more time for Koresh. Dr. Miron noted that Koresh's discussion in the letter of mundane issues such as book rights, and his ability to contact his lawyer after he 'comes out,' were future oriented and therefore inconsistent with typical suicide precursors such as self-blame, guilt, or despair. After analyzing all five letters, Dr. Miron concluded on April 15, 1993 that he did not believe 'there is in these writings any better, or at least certain, hope for an early end to the standoff.' "[39] This influential analysis was submitted just three days before the fire. The official opinion was now fixed: Koresh was a determined, hardened, manipulative, and paranoid adversary who had no intention of delivering himself. This appears to have been a serious misreading of the Mount Carmel situation. It is doubtful that Miron had the competence to judge or evaluate this type of biblically based material.[40] From Koresh's worldview, the April 14 letter is "rational" and consistent, reflecting the Branch Davidians' unfluctuating understanding of the situation. For seven weeks Koresh had said, consistently and incessantly, he would not come out until he received his word from God. Then he wrote that he had received that word and that he was coming out. All the legal issues related to a surrender had been worked out by DeGuerin and Zimmerman prior to Passover, which began on April 5. Koresh repeatedly told them that he was coming out, but that he had first to resolve what course he should take from his own religious perspective and faith.

What is doubly tragic is that Attorney General Reno was apparently never told about this April 14 breakthrough, nor shown this crucial letter. The Department of Justice report reveals that meetings were held in Washington throughout the week prior to the Monday, April 19, CS gas assault on Mount Carmel.[41] The FBI was pressing for permission to go in with force. Reno was very hesitant and kept asking whether there was any other way. She repeatedly asked, "What are the arguments for waiting?" A crucial meeting was held

with the attorney general on April 14, the very day Koresh released this letter, to discuss the effects of CS gas on children.[42] Toward the end of that week, as deliberations in Washington continued, Reno decided to go ahead with the FBI plan but then reversed herself on April 16, requesting more information. The FBI not only supplied her with the religiously uninformed analysis of Miron but also, on April 17, they presented her with a memorandum from Park Dietz of the UCLA School of Medicine, which also concluded that Koresh was a con man, that further negotiations were hopeless, that he was not coming out, and that he was likely involved in the continued sexual abuse of the children inside. Reno was finally persuaded and gave permission for the CS gas operation. From her account to the media the day of the fire, clearly this unsubstantiated charge of child abuse, more than any other factor, pushed her over the edge. Later that week the Department of Justice issued a "clarification" stating that in fact they had no evidence of child abuse during the fifty-one-day siege. Indeed, Texas Children's Protective Services had thoroughly investigated the child abuse charges in 1992 and dismissed them for lack of evidence.[43] Apparently, Reno was not apprised of this information. There is also no indication anywhere in the Department of Justice report that the attorney general was ever shown the videotapes the Branch Davidians had made and sent out during the siege, which included interviews with many of the adults and their interactions with the children. If she had viewed these tapes, her perceptions of the Davidians might have been humanized, and she would have seen Koresh's relaxed and normal interaction with his children. Even in the official Department of Justice report, the FBI maintains that "historical evidence suggested that Koresh had engaged in child physical and sexual abuse over a long period of time prior to the [B]ATF shootout on February 28."[44] The evidence was technically hearsay coming from disaffected former Davidians and, whether true or not, was passed on as undoubted fact.

On April 19, the day of the fire, Jeff Jamar, the FBI agent in charge at Waco, emphatically stated on CNN's *Larry King Live* and ABC's *Nightline* that the FBI had incontrovertible evidence, based on classified government surveillance techniques, that Koresh had *not* begun

his manuscript on the Seven Seals and had no plans to do so.[45] When he was specifically questioned about the April 14 letter and Koresh's promise to surrender, he insisted that, based on this undisclosed evidence, Koresh's latest claim was merely a further attempt to delay surrender and manipulate the authorities. The Department of Justice report makes it clear that the FBI had already decided *weeks before* that they were going ahead with the CS gas attack and that they were not to be deterred. Their only obstacle was convincing Attorney General Reno. By a highly selective presentation of the evidence, and through a reliance upon the one-sided opinions of their two outside "experts," the FBI prevailed. When Dick DeGuerin told Jeff Jamar about the April 14 letter, Jamar was apparently concerned about not tipping him off regarding the upcoming plan to go in with force. He told him, "We've got all the time it takes"; yet he was aware that on that very day meetings were being held in Washington to plan the Monday assault.[46]

We now know that Koresh was working on his manuscript, which he considered his divinely sanctioned task and opportunity. He worked on it as late as Sunday evening, the night before the April 19 assault, completing his exposition of the First Seal. Those in Mount Carmel were excited and pleased by his progress, fully convinced that they would soon be able to come out peacefully.[47] Ruth Riddle, a Branch Davidian who survived the fire, served as his stenographer and typist that weekend. On the day of the fire, she carried out a computer disk in her jacket pocket, containing what Koresh had written up to that point. A substantial piece, it runs about twenty-eight manuscript pages; it reflects Koresh's personality in its style, content, and passion.[48] At the end of the document, he quotes the book of Joel and then offers his commentary: " 'Blow the trumpet in Zion, sanctify a fast, call a solemn assembly. Gather the people, sanctify the congregation, assemble the elders, gather the children, and those that nurse at the breast; let the bridegroom go forth from his chamber, and the bride out of her closet [Joel 2:15, 16].' Yes, the bride is definitely to be revealed for we know that Christ is in the Heavenly Sanctuary anticipating His Marriage of which God has spoken. Should we not eagerly ourselves be ready to accept this truth

and *come out of our closet and be revealed to the world* as those who love Christ in truth and in righteousness?" (emphasis added). Koresh had found his text for the situation at hand. As he then understood events, as always through the lens of the biblical prophets, the group was to come out and be revealed to the world. This does not mean he had given up his apocalyptic scenario or his view of himself as the Koresh/Christ who would in the end confront and defeat Babylon. He surely believed that God would bring about the final confrontation in the future. He had come to understand that his immediate task was to communicate his message to the world, after which he would surrender and allow God's will to unfold.

The only effective way to communicate with Koresh was within the biblically based apocalyptic "world" he inhabited, taking advantage of the inherent flexibility that the situation at Mount Carmel presented. Of course, no one can ever know if Koresh would have honored his pledge to come out once the manuscript was finished, but whether he would have or not, the outcome could not have been more terrible. To the FBI he was a con man using religion to cover his need for dominance and pleasure. To the psychiatrists he was psychopathic, suffering from delusional paranoia. Such perceptions, whether valid or not, obscured the only positive means of dealing with Koresh and his followers. Although the FBI has charged that Koresh constantly went back on his word, contradicting himself and willfully breaking his promises, the Department of Justice's highly detailed log reveals otherwise: Koresh and his followers were utterly consistent from March 2 onward. They had been told to wait by God; they would not come out until Koresh received his word from God telling them what to do. No amount of pressure or abuse would move them from this path. The final tragedy is that, when Koresh finally got his "word" on April 14, no one with any understanding of the religious dynamics of the situation had access to those making the decisions that week in Washington.

Who or what caused the fire on April 19 remains a matter of controversy. The government claims that the evidence shows the fire was deliberately set on orders from Koresh.[49] The survivors vehemently

deny this. First, they insist that, according to their beliefs, suicide is a serious sin. Further, they maintain that most of the women and children who died were trapped by the fire in the concrete storage vault and could not escape.[50] They report that before noon that day Koresh himself had led them there for their safety to escape the gas, urging the women to protect with wet blankets the children who were too young to wear gas masks. These Davidians maintain that it is inconceivable that Koresh would allow his followers—not to mention his own wives and children, whom he deeply loved and treasured—to die in this way. Whatever the truth, the actions by the government on April 19 were inexcusable, particularly given the positive turn in the situation the week before. The entire fiasco was unnecessary. What is doubly tragic, as this book will demonstrate, is that the government, including the president and the attorney general, the media, and the general public have not begun to comprehend what went wrong at Waco in the spring of 1993 and its implications for religious freedom in our society.

TWO

Moving to Mount Carmel

WHO WERE THE 130 BRANCH Davidians living at Mount Carmel in the spring of 1993, how had they come there, and why did they choose to stay even if remaining there might lead to death? The public was never shown the human side of the Waco story, despite the fact that during the siege the Branch Davidians made and released three one-hour videos in which many of them talked on camera, trying to communicate something about themselves and their convictions. Perhaps fearing that these tapes would produce a sympathetic reaction from the American public, the FBI chose not to release them to the media. The official Department of Justice report notes that those who spoke on these videos appeared calm, assured, thoughtful, and articulate. The report concludes, "The abiding impression is not a bunch of 'lunatics,' but rather of a group of people who, for whatever reason, believed so strongly in Koresh that the notion of leaving the squalid compound was unthinkable."[1]

A few statistics begin to convey some important elements of the human side of this story. In the spring of 1993 the Mount Carmel community numbered approximately 130 persons, which included 42 men, 46 women, and 43 children aged sixteen or younger. Some members of this group had lived on the Mount Carmel property

NOTES

CHAPTER 1

1. According to David Thibodeau and other survivors, group members did not formally refer to themselves as Branch Davidians but rather understood themselves as "students of the seven seals." Those who came to Mount Carmel in the late 1980s were not organized into any official denomination. They were attracted to the teachings of David Koresh and came to the center to study the Bible, coming and going as they were willing or able. As we will discuss in the following chapter, the name "Davidian" goes back to Victor Houteff, who founded the original Mount Carmel community in 1935. The designation "Branch" was introduced in 1970 by Ben Roden, a subsequent leader of the group. Koresh identified himself with these leaders; and in his taped messages to his students around the world, he often addressed them as "Branches." We use the term "Branch Davidian" in this book as a convenient designation for the Mount Carmel movement in the 1980s and 1990s.
2. We use quotation marks to highlight the pejorative force that terms like "cult" and "cult" leader have in anticult polemics.
3. Koresh recounts his story later that day in a telephone interview with Charlie Serafin broadcast live on the Dallas radio station KRLD.
4. The official BATF account of what happened that day is in the *Report of the Department of the Treasury on the BATF Investigation of Vernon Wayne Howell also Known as David Koresh* (Washington, D.C.: U.S. Government Printing Office, 1993), hereafter, *Dept. of Treasury Report.* It is worth noting that the surviving videotape footage of the shoot-out shows BATF agents firing heavily and randomly at the building, but the cars and trucks behind which they are crouched show no signs of return fire—windshields are intact, no dust is being kicked up around them. Also, the windows in the front of the building are curtained, and no one is visible. Obviously, since BATF agents were wounded and killed, the Branch Davidians did return some fire; however, survivors insist it was minimal and that most of them were on the floor, terrified of being hit by the bullets coming from all directions, including from the helicopters overhead. On the 911 audiotapes, Wayne Martin, the Branch Davidian lawyer who made the call minutes after the raid, keeps insisting that they are not returning fire and demanding that the BATF agents be called off. He repeatedly says, "Tell them to back off, there are women and children in here."

5. In testimony at the trial, the BATF agent Ken King, who was severely wounded, testified that his orders were to forcefully enter the building on the south side within thirty seconds after arrival with no contingency plans for surrender or peaceful entry contemplated (Jack DeVault [special correspondent], unpublished notes of trial testimony, January 24, 1994). The *Dept. of Treasury Report* candidly discusses the forceful "raid" tactics, rejecting a peaceful serving of the search warrant as an option; see pp. 133–42.
6. See *United States Department of Justice Report to the Deputy Attorney General on the Events at Waco, Texas, February 28 to April 19, 1993*, Redacted Version (Washington, D.C.: U.S. Government Printing Office, 1993), pp. 280–94, for a detailed account (hereafter, *Dept. of Justice Report*). This is the main volume, 348 pages plus appendixes, of the official Department of Justice report on Waco.
7. The total cost of the Waco operation has not been disclosed and would be difficult to calculate; however it clearly ran into the millions of dollars. On any given day there were a minimum of 719 law enforcement officers involved in the Waco operation. The FBI alone committed 668 personnel to the standoff, with approximately 217 agents and 41 support personnel present each day of the siege. In addition, there were personnel from the BATF, Texas Rangers, Waco police, McLennan County Sheriff's Office, U.S. Customs, Texas National Guard, Texas Department of Public Safety, and the United States Army (See *Dept. of Justice Report*, pp. 8–10). The involvement of U.S. military personnel and equipment, including Bradley fighting vehicles, raises questions about possible violations of the *posse comitatus* act that forbids the use of United States armed forces against citizens.
8. See *Dept. of Justice Report*, pp. 102–104, for names and details of the injuries. The six Branch Davidians officially listed as dead do not include Koresh's eighteen-month-old daughter who, in his interviews over KRLD radio and CNN television the day of the raid, Koresh tearfully claimed was killed. Surviving Branch Davidians express puzzlement over this statement and deny knowledge of this child. Whereas the medical examiner concluded that seventy-five persons died in the fire on April 19, the Davidians only list seventy-four names, leaving one unaccounted for. This remains one of the many unsolved mysteries connected with the events at Waco.
9. Two of the women who died were pregnant. Some bodies cannot be identified although DNA testing continues. The total Branch Davidian community in the Waco area on the day of the initial raid numbered approximately 130. Fifty-one days later, 80 had been killed, 35 had been sent out before April 19, 9 survived the fire, and 6 or more had been outside Mount Carmel on February 28. Most died from smoke inhalation, a few from falling debris, and some from gunshot wounds, apparently self-inflicted as the heat from the fire became unbearable.

David Koresh's body was identified by the chief medical examiner, based on dental records in an autopsy completed on May 5, 1993 (Tarrant County Case no. 930009). He died from a gunshot wound to the midforehead. He was buried at a private gathering attended by his mother and four relatives in Tyler, Texas, in Memorial Park Cemetery on May 27. No clergy were present, and no ceremony was conducted. His coffin was draped with an Israeli flag procured from Congregation Ahavath Achim, the local Conservative Jewish temple. Rabbi Lawrence Finkelstein reported to James Tabor that Bonnie Haldeman, Koresh's mother, had come to his office and had asked how she could obtain an Israeli flag for the burial. He related that one had been recently found discarded on a Texas highway by a passerby and had been brought to the synagogue in Tyler. The rabbi had it cleaned and stored it away, having no immediate use for it. He gave the flag to Mrs. Haldeman for Koresh's burial.

10. On October 29, 1994, a full twenty months later, it was reported that the two BATF agents who had led the initial raid, Charles Sarabyn and Phillip Chojnacki, had also been dismissed from the agency. It was charged that they were guilty of poor judgment and subsequent lying to investigators (Bill Hirschman, "ATF Fires Agents Who Led Raid on Waco Compound," *Fort Lauderdale Sun-Sentinel*, October 29, 1994, p. 1A). Sarabyn and Chojnacki were subsequently rehired on December 21, 1994, with full back pay and benefits. Both had threatened lawsuits, which this settlement by the BATF sought to avoid.

11. These calls were initiated by Koresh in an attempt to tell his side of the situation to the public. Koresh had spoken over CNN with the anchorman David French at 7:25 P.M. on Sunday, the day of the raid. He subsequently called in and spoke with the KRLD station manager Charlie Serafin at 10:05 P.M. for about twenty minutes and then again at 1:50 A.M. for about twenty-five minutes. The FBI was upset over these contacts and requested that no further interviews be conducted. At 1:30 P.M. on Monday, March 1, all but two telephone lines in Mount Carmel were cut off. The remaining two lines could only be used to reach the federal negotiators (*Dept. of Justice Report*, pp. 26–28).

12. See Department of Justice, *Evaluation of the Handling of the Branch Davidian Stand-off in Waco, Texas* (Washington, D.C.: U.S. Government Printing Office, 1993), pp. 42 (hereafter *Evaluation*). In addition to the main volume of the *Dept. of Justice Report*, there were three smaller volumes produced by the Department of Justice review dealing with related aspects of the Waco events: *Recommendations of Experts, Evaluation of the Handling of the Branch Davidian Stand-off*, and *Lessons of Waco*.

13. See the interview with Koresh's attorney Dick DeGuerin, by Peter Maas in his article, "What Might Have Been," *Parade*, February 27, 1994, pp. 4–6.

Also, note the insightful reports of Nancy Ammerman and Lawrence Sullivan, both of whom offer a religious studies perspective, in the official Department of Justice report, *Recommendations of Experts for Improvements in Federal Law Enforcement after Waco* (Washington, D.C.: U.S. Government Printing Office, 1993), hereafter, *Recommendations.*

14. According to FBI records, over the fifty-one-day period negotiators spoke by telephone with over fifty individuals inside Mount Carmel, logging in a total time of over two hundred hours. However, 80 percent of this time was spent talking with Schneider and Koresh. There were 459 conversations with Schneider, which took up ninety-six hours, or nearly half the time; and Koresh had 117 conversations that took up another sixty hours (*Dept. of Justice Report,* pp. 10–11).
15. Ibid., pp. 57–58.
16. Ibid., pp. 54–55.
17. Lee Hancock, "Another Delay at Waco," *Dallas Morning News,* March 5, 1993, pp. 1A, 15A.
18. *Dept. of Justice Report,* p. 237. On March 1, President Clinton spoke with Acting Attorney General Gerson about the Waco situation.
19. Ibid., p. 70.
20. Ibid., p. 79.
21. We are using *apocalypticism* here to refer to the view that the End Time is imminent, with the signs of the end unfolding according to a set sequence of events revealed in the prophetic texts of Scripture.
22. According to surviving Davidians, the change in location for some of these events from Israel to Texas was increasingly discussed as Koresh became more and more convinced that an initial confrontation at Mount Carmel was likely.
23. See interview with Henry McMahon, by James L. Pate, in "Waco: Behind the Cover-up," *Soldier of Fortune,* November 1993, pp. 36–41, 71–72; also Livingstone Fagan, "Mt. Carmel: The Unseen Reality," p. 12.
24. *Dept. of Justice Report,* p. 75.
25. "And there shall be signs in the sun, and in the moon, and in the stars; and upon the earth distress of nations, with perplexity; the sea and the waves roaring; men's hearts failing them for fear, and for looking after those things which are coming on the earth: for the powers of heaven shall be shaken" (Luke 21:25–26). The gospel of Matthew speaks of "the sign of the Son of man in heaven" (Matt. 24:30).
26. David Thibodeau, conversations with James Tabor, Guilford College, Greensboro, N.C., June 22–23, 1994.
27. Phillip Arnold attended the March 7 FBI press briefing and introduced himself to the spokesperson, Agent Bob Ricks. He later went to the FBI Command Center in Waco and offered his services.

28. As it turned out, Arnold and Tabor were never allowed to communicate directly with Koresh. The FBI negotiators only made use of their expertise in the few conversations that Arnold had with several midlevel agents.
29. *Dept. of Justice Report*, appendix C, and p. 186.
30. At one point, early in March, Engleman asked the Branch Davidians to move their satellite dish to a specific position if they were listening. They responded a few minutes later. Also, David Thibodeau, one of those who survived the fire, reports that Engleman's show was avidly followed by the group each day.
31. David Thibodeau, conversations with James Tabor, Washington, D.C., November 15, 1993.
32. A full account of Arnold and Tabor's involvement is published in *From the Ashes: Making Sense of Waco*, ed. James R. Lewis (Lanham, Md.: Rowman & Littlefield Publishers, 1994), pp. 13–32.
33. As we will explain in chapter 2, the Branch Davidians observed the Sabbath on Saturday and other Jewish annual holy days mentioned in the Bible.
34. A facsimile of this letter is found in *Dept. of Justice Report*, appendix E.
35. *Dept. of Justice Report*, p. 105. In this official report, the only place this April 14 letter is mentioned is the chronological log for April 9, five days *before* it was even written. Koresh released his first letter that day, and the log notes that "Koresh sent out four additional letters." It is unlikely that anyone reading the Department of Justice report would notice its existence or realize that it was a direct response to the audiocassette from Arnold and Tabor that the FBI allowed Dick DeGuerin to carry into Mount Carmel on April 4.
36. This is also the conclusion of Brad Bailey and Bob Darden, *Mad Man in Waco: The Complete Story of the Davidian Cult, David Koresh and the Waco Massacre* (Waco, Tex.: WRS Publishing, 1993), pp. 218–30.
37. See *Evaluation*, pp. 41–42.
38. *Dept. of Justice Report*, p. 175.
39. Ibid., p. 176.
40. As it turns out, quite the opposite is the case. Apparently, Miron is an anticult activist. He was involved in the 1970s with the Citizens' Freedom Foundation, the anticult group that became CAN. The very week he was offering his evaluation to the FBI, he published an article in the *Syracuse New Times* called "The Mark of a Cult," which simply echoed standard, uninformed slander of new religious movements. Few scholars in the academic study of religion or in the field of sociology accept the category or label "cult" for such new religious movements. Dr. Miron appears to lack academic qualifications in the fields of religious studies, biblical studies, or the sociology of religion. Although the FBI denies that it was influenced by so-called cult experts, the evidence shows otherwise (*Dept. of Justice Report*, pp. 190–93).

41. *Dept. of Justice Report*, pp. 263–79.
42. See *Dept. of Justice Report*, pp. 263–76, for documentation on the following sequence of events.
43. We have a copy of the transcript of a phone conversation between Koresh and Joyce Sparks, a supervisor from the Texas Children's Protective Services office, taped on April 2, 1992, discussing the investigation. The tone of the conversation is extremely cordial, and Koresh effectively presents the perspective of the group. See the discussion of this point by Lawrence Lilliston, "Who Committed Child Abuse at Waco?" in *From the Ashes*, pp. 169–73.
44. *Dept. of Justice Report*, p. 217.
45. Paul Anderson, in his recent biography of Janet Reno, *Janet Reno: Doing the Right Thing* (New York: John Wiley & Sons, 1994) perpetuates this false story. As part of his justification of Reno's decision to move against Mount Carmel with the tanks, he claims that Koresh had promised to surrender after writing his Seven Seals manuscript, "but he wasn't writing" (p. 188).
46. DeGuerin, "Interview," p. 6.
47. Ruth Riddle, telephone conversations with Phillip Arnold, October 1993, reported to James Tabor; and Thibodeau, conversations with Tabor, June 22–23, 1994.
48. For the text of Koresh's manuscript, "The Seven Seals of the Book of Revelation," and the commentary by James Tabor and Phillip Arnold, see the appendix. The computer disk is actually listed as Lab Item 20D in the "Fire Investigation Report," see *Department of Justice Report*, appendix D, p. vii. It is described as a Maxell MF2-DD floppy disk marked "Seven Seals." It was subsequently released to the attorneys of Ruth Riddle, passed on to Dick DeGuerin, and finally to Arnold and Tabor for analysis. Tabor and Arnold prepared a printed edition with commentary, in consultation with Ruth Riddle, who was being held in jail in San Antonio. Dick DeGuerin authorized the release of the manuscript to *Newsweek* magazine and the Associated Press in October 1993. The manuscript was formally presented by Arnold and Tabor to interested scholars at the American Academy of Religion, Annual Meeting, Washington, D.C., November 22, 1993.
49. The government position is summarized in the *Dept. of Justice Report*, pp. 295–307, and appendix D, which contains the "Fire Investigation Report."
50. In the taped conversation between Koresh and Joyce Sparks of the Texas Children's Protective Services made on April 2, 1992, he discusses in detail the charge that the group might commit suicide, denying it categorically. Koresh repeatedly told FBI negotiators that suicide was not a possibility (*Dept. of Justice Report*, pp. 50, 210–14). See James R. Lewis, "Fanning the Flames of Suspicion: The Case against Mass Suicide at Waco," in *From the Ashes*, pp. 115–20; and Ron Cole, *Sinister Twilight*, 2d ed. (privately published, 1994), pp. 65–79.

CHAPTER 2

1. *Dept. of Justice Report*, p. 205.
2. *Seventh-Day Adventist Yearbook, 1994* (Hagerstown, Md.: Review and Herald Publishing Assoc., 1994), p. 4.
3. Thibodeau, conversations with Tabor, June 22–23, 1994.
4. They mailed out the literature and distributed it at Adventist gatherings. One tract from the 1980s is titled "Divided We Stand-Divided We Fall." Directly addressed to the Seventh-Day Adventist reader, it offers a survey of church history up through Ellen G. White, then catalogues the apostasy of the Adventist movement since her time. The concluding paragraph captures the flavor of the essential message: "The Seventh-day Adventists were given a divine commission to warn the world of these events, but they themselves rejected truth from Heaven in 1929, 1955, and 1977, when divinely inspired messengers bearing the 4th, 5th, and 6th angels messages of Revelation 14:14–18 were sent to them. Now God calls the world to witness what He will do to His rebellious children in the Seventh-day Adventist church. Read Amos 3:7–10. The prophetic voice of the Seventh Angel of Revelation 10:7 is speaking to you. The seventh and last prophetic movement of the Reformation has been raised up by God with a prophet to call you to repentance and to bring the Reformation to a grand, glorious climax of unity amongst God's children of all denominations and religions (Eph 4:13). "SURELY THE LORD GOD WILL DO NOTHING, BUT HE REVEALETH HIS SECRET UNTO HIS SERVANTS THE PROPHETS (LIVING TODAY).' Amos 3:7." This tract is undated, but it gives a post office box in Palestine, Texas, indicating that it comes from the period 1985–1990 when Koresh's followers were located there. Koresh is not mentioned in this tract. The messengers in 1929, 1955, and 1977 are of course his predecessors, Houteff and Ben and Lois Roden, respectively. Despite this prediction of a completion of the Protestant Reformation and the appeal to "all denominations and religions," it is obvious that the audience is in fact limited to Seventh-Day Adventists, who would be familiar with the idea of the angelic messages of Revelation 14, and who would have identified the third angel with their own prophet Ellen G. White.
5. For example, the opening of "Judge What I Say" (April 2, 1985), audiocassette.
6. "Study on Joel and Daniel 11" (1987), audiocassette.
7. See Marc Breault's autobiographical account, co-written by Martin King, in *Inside the Cult: A Member's Chilling, Exclusive Account of Madness and Depravity in David Koresh's Compound* (New York: Signet Books, 1993), pp. 46–70.
8. "Confusion" (July 18, 1987), audiocassette transcript, p. 21.

Mr. ZELIFF. I would like to thank you, Mr. McClure, Texas Rangers, Dr. Tabor, Dr. Arnold.

The joint oversight subcommittees on Waco stand adjourned until 9 a.m. tomorrow.

[Whereupon, at 11:13 p.m., the subcommittees adjourned.]

ACTIVITIES OF FEDERAL LAW ENFORCEMENT AGENCIES TOWARD THE BRANCH DAVIDIANS

(Part 2)

WEDNESDAY, JULY 26, 1995

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON CRIME, COMMITTEE ON THE JUDICIARY, JOINTLY WITH THE SUBCOMMITTEE ON NATIONAL SECURITY, INTERNATIONAL AFFAIRS, AND CRIMINAL JUSTICE, COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,

Washington, DC.

The subcommittees met, pursuant to notice, at 9:25 a.m., in room 2141, Rayburn House Office Building, Hon. Bill McCollum (chairman of the Subcommittee on Crime) presiding and Hon. William H. Zeliff, Jr. (chairman of the Subcommittee on National Security, International Affairs, and Criminal Justice).

Present from the Subcommittee on Crime: Representatives Bill McCollum, Steven Schiff, Howard Coble, Stephen E. Buyer, Steve Chabot, Bob Barr, Fred Heineman, Ed Bryant of Tennessee, Charles E. Schumer, Robert C. Scott, Melvin L. Watt, Shelia Jackson Lee, and Zoe Lofgren.

Present from the Subcommittee on National Security, International Affairs, and Criminal Justice: Representatives William H. Zeliff, Jr., Robert L. Erlich, Jr., Ileana Ros-Lehtinen, John L. Mica, Peter Blute, John B. Shadegg, Mark E. Souder, Karen L. Thurman, Tom Lantos, Robert E. Wise, Jr., Gary A. Condit, Louise McIntosh Slaughter, Gene Taylor, and Bill K. Brewster.

Also present from the Committee on the Judiciary: Representatives Henry J. Hyde and John Conyers, Jr.

Also present from the Committee on Government Reform and Oversight: Representatives William F. Clinger, Jr., Cardiss Collins of Illinois, and Gene Green.

Staff present from the Subcommittee on Crime: Paul J. McNulty, chief counsel; Glenn R. Schmitt, counsel; Daniel J. Bryant, assistant counsel; and Audray L. Clement, clerk; Committee on the Judiciary: Alan F. Coffey, Jr., general counsel/staff director; Dan Freeman, parliamentarian; Julian Epstein, minority staff director; Perry Apelbaum, minority general counsel; Melanie Sloan, minority counsel; and Tom Diaz, minority counsel.

Staff present from the Subcommittee on National Security, International Affairs, and Criminal Justice: Robert Charles, staff director and chief counsel; L. Stephan Vincze, defense counsel; T. March Bell, counsel for justice affairs; Michele Lang, special counsel; and

Sean Littlefield, special assistant and clerk; Committee on Government Reform and Oversight: Kevin Sabo, general counsel; Judith McCoy, chief clerk; and Jeffrey Wilmot, professional staff member.

Mr. MCCOLLUM. These hearings of the joint subcommittees on the Waco matter will come to order. This morning we are going to have the usual short opening statements from the four principal chairmen and ranking members and then we are going to go immediately to our first panel that was kicked over from yesterday.

As you know, we now have begun the first of what will be five days of hearings. We had not intended to meet tomorrow but because of the delays yesterday we are going to be forced to hear from a panel that was scheduled to be later this afternoon tomorrow, and we will do that. We will then, again, meet on Friday and on Monday and hopefully we will conclude these hearings at that time.

Our attention now turns to the FBI and the Department of Justice. During an appearance on "60 Minutes" in May, Attorney General Reno said words to the effect that there had been, in her judgment, no mistakes that warranted taking action against any of the parties involved from the FBI in the raid and in the assault and in the siege.

We are here to learn and to corroborate or deny that particular statement and assertion, essentially. What we want to do is try to review as carefully as we can what happened in that 51-day siege and what happened in the assault. We need to know the background and we need to know the conclusions and reasons for those conclusions in the decisionmaking process that led to the use of CS gas and led to the use of force in the final assault instead of continuing the negotiations. I think that is really the heart of what this is all about at this juncture.

Yesterday, we had some tough criticisms lodged with respect to this by the two attorneys who represented the leading figures in the matter of those Davidians who were killed in the compound at Mount Carmel during that final assault.

Mr. DeGuerin, in particular, who was the attorney for the late David Koresh said to us yesterday that he believed, as did Mr. Zimmermann, who was with him, that had there been just about 10 more days of negotiations they were absolutely convinced that there would have been a surrender, that Koresh would have come out, and there was a basis for it that made this particular negotiation that was going on just preceding the assault fruitful as opposed to those where Koresh had indicated he would surrender earlier and did not.

They were very compelling in their testimony as to why they felt that way. They spent a lot of time going over with us the details of their reasoning and how they got to that point. In fact, they asserted that a deal had been made, in essence, in their mind and that they could not believe it when the assault actually took place. They were convinced that some of you, at the table today, in our first panel were equally aboard with them in this final negotiation and that there was a general consensus that movement had been made, very significant movement.

And we are here today, in part, to explore why, perhaps, there is a difference of opinion on that. Maybe there is not. We do not know.

There also was a concern expressed that because they could not believe that those who were involved in the negotiations and in the operation in the field had changed or had lied to them, as they put it, they felt very strongly that it must have been a Washington bureaucrat, I think as Mr. Zimmermann put it, who overrode the surrender plan or surely this would not have occurred, because they felt very betrayed otherwise in this process.

Then we heard yesterday evening from two experts in religion, Drs. Tabor and Arnold, who agreed with the challenge that had been presented earlier in the day. They believed that Koresh had not broken all of his promises during his negotiations and walked through an explanation of his psyche, if you will, with respect to how he came to each step of his decisionmaking process. And why they believe very strongly that based upon analysis of his religious views and his convictions that he was, indeed, prepared to come forward when this tragic event occurred on April 19.

It was their conclusion in a very elaborate discussion that Koresh had come to himself on this though this process was unique to his interpretation of the Seven Seals in the Book of Revelation, and that had he been permitted to fulfill the contract, if you will, that he thought he had made with regard to surrender, on this occasion, he would have done so.

There was a lot of discussion late last night, when we kept the panel here until 11 o'clock or so, about the details of that and particularly about the positive reinforcement that Dr. Tabor saw in the attitude of Koresh and the fact that he had some reason to come out at that point, something that Koresh was really wanting to do at that juncture.

They also pointed to the tapes that had been played—that we did not get to hear openly in the hearing but were given to us—of the last few days of discussions with David Koresh in which they say this was corroborated, that inside the compound over the last couple of days there was joy, there was clear indication by all the members of the Davidians that they were coming out and they were happy about it and they really believed that they were coming out once Koresh finished writing his interpretation of the seals.

Well, at any rate, that is what we heard yesterday.

We also heard at that time about concerns over the pressure tactics that were used by the FBI. The fact that almost all of the witnesses yesterday did not believe that was appropriate and, in fact, were negative. And that, in fact, the use of the CS gas at the end actually was fulfilling the doomsday prophecy that would have pushed Koresh over the edge. That they had convinced him or he had been convinced that, indeed, his original assumption about the fifth seal was wrong, that it was not his time to have Armageddon, if you will, or to die, but rather that it was his time to expound his prophecy. But that when the last assault was made he became and would have become, under the normal course of understanding this, convinced that it was all over, that he was, indeed, destined to be the one who met the day of judgment there, so to speak.

Now, in addition we heard some words that we are not going to rehash today about the shots and who fired first? I think, frankly when you get done with it—I would like to tend to believe as most would I think, the ATF officers and those involved—that the shots first came from inside the compound.

But we did hear the attorneys yesterday who were eyewitnesses to some of the actual bullet holes say they were absolutely certain that shots came from without, that they came through the roof of the building. There has been no logical explanation to corroborate that because no one has been able to tell us, in any way in these hearings, that the helicopters had fired or that they had the equipment on them to make those kind of bullet holes.

On the other hand, there is no logical explanation for why the holes would have come through the roof as these attorneys described them yesterday, from their own visual inspection, if they did not come from the helicopters.

On the other hand, we also had them saying that there were marks in the front door, a missing door. We had some explanation about that but it was, as they said themselves, unsatisfactory and inconclusive and rather than criticize the issue of the who shot first, they suggested that we be more pointed and concerned about the raid plan to begin with.

We heard tough words from the Texas Rangers. They believe that the FBI should have used them in dealing with Koresh and that Koresh may have surrendered to them based on comments Koresh made. They also challenged the point, which we will talk about tomorrow at length, that no other specialized law enforcement unit could have replaced the FBI's highly trained Hostage Rescue Team for a short duration had they needed to fall back to regroup and retrain in order to continue the siege that was on at the time the final assault was made.

And last, but not least, the Texas Rangers made it very clear to us that after their criminal investigation they came to the conclusion that two ATF officers, Sarabyn and Chojnacki should be prosecuted for false statements or lying and apparently they have recommended that to the Attorney General. I do not know where that stands.

So, today, we come forward with the status that we are with our witness panel that we will be discussing the issue with respect to what actually happened from the FBI's perspective and how we got into this whole matter after they assumed the role of the lead agency for the 51-day siege.

But before we do that, I want to yield to Mrs. Thurman for any opening comments she may have and then to Mr. Zeliff and Mr. Schumer.

Mrs. Thurman.

Mrs. THURMAN. Thank you, Mr. Chairman, and let me welcome you all. I certainly do appreciate the fact that you have stayed over an extra day and you probably will be better served than if you would have been here at 1 o'clock this morning. So we do appreciate the fact that you have come back again today.

Clearly, the decision to try, after waiting 51 days, to force David Koresh and his followers to surrender peacefully to authorities was a difficult one. Today, we will begin to examine the process by

which the introduction of tear gas into the compound was planned and approved. Yesterday, we spent the morning and the afternoon listening to Mr. Zimmermann, lawyer for Steve Schneider, a resident of the Branch Davidian compound and Dick DeGuerin, the attorney for David Koresh.

I think the one thing we can all agree on is that Mr. Zimmermann and Mr. DeGuerin are very good defense attorneys, as our colleague from Houston, Ms. Sheila Jackson Lee, pointed out in her introduction of her fellow Texans to the subcommittee yesterday.

The fact of the matter is that both Mr. Zimmermann and Mr. DeGuerin said yesterday that they were clearing their calendars because they were preparing to go to court on behalf of their clients. Yesterday was perhaps their only chance to present their client's case in a public forum. However, I would like to point out some facts that may have been blurred by Mr. Zimmermann's and Mr. DeGuerin's testimony.

First, I believe it was well documented that David Koresh was teaching to follow its final prophecy. We heard that from Kiri Jewell, Dr. Bruce Perry, Joyce Sparks, and Robert Rodriguez. The notion that Koresh would have surrendered peacefully at any time is simply not supported in his actions.

In addition, the evidence of child abuse, including sexual abuse by Koresh, has also been undisputed. If Kiri Jewell's testimony was not enough, then surely the testimony of Joyce Sparks who spent hour upon hour talking to the children should convince anyone that Koresh was both capable and willing to commit crimes against children. Remember even Koresh's defense attorney admitted Koresh was worried about facing child abuse charges.

Last night we began our investigation into the negotiation process. We heard that the FBI consulted with a range of experts. Mr. McClure, a recognized negotiation expert from Atlanta, stated that it was necessary to use only trained negotiators in dangerous seed situations. That is what the FBI did. This is consistent with the effective negotiation strategy.

On the issue of CS gas, I think we can characterize the decision to use CS gas as a way of peacefully ending the standoff as one of the many hard choices that faced the FBI during the 51-day standoff. There were no easy answers.

Would additional time in the negotiation process have altered the ultimate outcome? I do not believe so. Once again we have taken very compelling testimony that clearly demonstrates Koresh desperately needed to fulfill his own fiery destiny.

And it is important to remember that negotiations with Koresh and the Davidians had broken down. No progress in negotiations had been made for 2 weeks prior to the decision to tear gas the compound. The plan was for gradual insertion of the gas and the FBI even informed the Davidians that they were going to use their gas to bring them out of the compound. Even after being warned about the impending gas, the Davidians opened fire on the FBI and the FBI did not return the fire.

We will examine the other options available to the FBI and the Department. I think it will be useful to examine these other options within the context of the entire standoff. However, the fact is the tear gas is used routinely by law enforcement. I would im-

plore all the members of the joint subcommittees to listen carefully to all of the testimony we will receive over the next few days regarding the use of CS gas to end the standoff at Waco.

I, for one, am not ready to pass judgment until I hear all of the relevant facts and considerations and weigh them within the context of the situation at Waco. Once again, I remind my colleagues of our mission, proper oversight by way of all the facts.

Thank you, Mr. Chairman and I will yield back the balance of my time.

Mr. McCollum. Thank you, Mrs. Thurman.

[The prepared statements of Mmes. Thurman and Collins of Illinois follow:]

Prepared Statement of Hon. Karen L. Thurman, a Representative in Congress From the State of Florida

Thank you Mr. Chairman. As we close our second week of hearing, I would like to briefly review some of what this panel has learned in our seven days of hearings into the events at Waco. First, I would say we have heard many witnesses give compelling testimony, however, I think one of the most moving moments of these hearings came from ATF Special Agent Jim Cavanaugh on Wednesday.

Mr. Cavanaugh vividly recounted how he attempted to negotiate a cease-fire with the Davidians on February 28, 1993 so the wounded officers could get life saving medical attention, while simultaneously listening to the pleas from his dying fellow officers in his other ear. I dare say few of us in this room have ever faced more pressure, anguish and emotion all at once. Yet Mr. Cavanaugh successfully achieved the cease fire and lives were saved.

Mr Cavanaugh also talked at length about the "unsolvable riddle" he faced when trying to deal with David Koresh, that is, somehow having to prove to the other Davidians that Koresh was *not* the Lamb of God. Mr. Cavanuagh also stated emphatically that the Branch Davidians opened fire first with overpowering weaponry that sounded like cannons compared to the AFT officers handguns, which, were in his words, sounded like "pop guns."

We learned about the exhaustive negotiations process from Mr. Sage and Mr. Jamar. Both gentlemen strongly believe that Koresh never at any time in the process intended to surrender. Mr. Cavanaugh said Wednesday that he believed that not even the Archangel Gabriel could have compelled Koresh to leave the compound. In his words, Koresh could not bring himself to give up his kingdom, where he reined supreme. Koresh also expressed worry about going to jail as a convicted child molester, something corroborated by his defense attorney, Mr. DeGurien.

In contrast to Mr. DeGurien's 32 hours of time spent talking with Koresh, the FBI had more than 900 conversations with Koresh, Steve Schneider and almost every other adult in the compound, more than 200 hours' worth. The negotiators even made videotape of themselves, showing pictures of their families, in an attempt to connect on a personal level to those inside the compound. Despite repeated attempts, Koresh constantly broke his promises. Mr. Jamar also established what I consider to be an important fact, that the children who remained in the compound were hostage to circumstances. Also, Mr. Sage said with great conviction that he would have given his own life to save the lives of those children.

After 51 days, despite every plea, consultation with experts in theology and taking the extraordinary step of allowing Mr. DeGurien and Mr. Zimmerman to attempt to negotiate, it became apparent that extraordinary measures were going to required to bring an end to the standoff.

We have heard about how the plan was developed to approve the insertion of tear gas into the compound to force the Davidians to come out.

Remember, the only two recognized experts on CS gas, the only people we have heard from who have done research into the effects of tear gas, said that the amount of gas that was eventually inserted into the compound *could not* have caused any injury to the children inside. After the tragic fire, subsequent autopsy reports indicated that *no* children had CS gas in their systems.

Also, the gas was inserted on an incremental basis. The FBI punched holes in the compound to allow escape routes for the Davidians once the gas took effect. The FBI alerted the Davidians that tear gas would be introduced, both over the telephone and over loudspeakers. The fact that nine people did come out indicates, tragically, that there was a suicide plan, just as previous witnesses had testified.

I want everyone to know that while the scientific evidence shows that the CS gas had no role in the deaths of the children in the compound, I am still troubled by the idea of introducing tear gas into an area where children are present. In fact, I think every member of this joint subcommittee feels the same way. However, it is critical that we remember that David Koresh could have ended this standoff peacefully and at any time. But because of his fear that he would be shown as a false prophet to his followers and lose his power over them, Koresh decided to kill himself, his followers, and the children, many of them his own.

So Mr. Chairman, as we prepare to end this series of hearings, I would once again like to state that my mission here on this joint subcommittee is to seek the truth. I believe that the facts that have come out over the last 2 weeks have put to rest some of the more serious charges against law enforcement. In closing, let me thank today's witnesses for coming and I look forward to their testimony. Thank you Mr. Chairman.

PREPARED STATEMENT OF HON. CARDISS COLLINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Yesterday, we heard a rousing defense of the Branch Davidians from their defense lawyers. They portrayed the Davidians in the best light possible. After all that is what they get paid to do.

The Defense lawyers argued that based on interviews with their clients, they believe at ATF fired first. But contrast this with the testimony of ATF agent Buford, who testified conclusively that he was at the raid, got shot, and without question the Davidians fired first.

Contrast the lawyers testimony with that of the Texas Rangers. The Rangers conducted an independent investigation. They are convinced that the Davidians fired first.

The lawyers also argued that Koresh would have come out if only he had been allowed to complete his seven seals. However, Mr. DeGuerin also admitted that Koresh was concerned about what would happen to him in prison as a known child molester. Koresh also lied repeatedly to the FBI as we will hear this morning. We can all decide for ourselves which of these is the more credible explanation of the behavior of Mr. Koresh.

One question we will have is not what went wrong, but how it could have been done right. Most witnesses who criticized the FBI said they would have waited longer, but none had a plan if waiting did not succeed.

Later today we will hear from witnesses about the tear gas plan. As a mother and grandmother, I intended to listen carefully about the safety of tear gas for women and children. At the same time, I intend to keep the words or Kiri Jewell in mind to remember that there were serious dangers in taking no action as well.

Let me clear the record on another point, Mr. Chairman.

In his opening statement this morning, Chairman McCollum said that the Rangers had testified that there was a plan whereby Koresh would surrender to them.

This is not the case. In fact, Rep. Buyer asked the Rangers this very question and they answered that they had heard speculation about such a plan, but one had never come about.

Let's not mix fact with fiction. David Koresh never intended to surrender to the Rangers, to the FBI, or to anybody else. He sought to fool law enforcement in 1993, don't let him fool the Committee and the public today.

Mr. MCCOLLUM. Mr. Zeliff.

Mr. ZELIFF. Every day we have received much new information as to what happened at Waco. Yesterday, alone, we learned of new surrender efforts that seem to have borne promise but got dismissed or preempted by the FBI's CS gas plan.

In this regard, we heard from two well-respected lawyers for the Davidians; one, a former military judge, who had visited the compound just days before it burned. We also heard from the widely respected Texas Rangers who collaborated portions of the lawyers' testimony and spoke of their respect for one of these lawyers, in particular.

We also learned that negotiators were making progress before their efforts came to a fiery end. On April 14 a corner seems to

have been turned, a willingness on the part of David Koresh to come out. But on April 19 there is the gas, the fire and then the ultimate tragedy.

New ground has been broken during the first 5 days of these marathon hearings. We have dug deeply into everything from the initial investigation and sufficiency of the warrant to botched planning, botched raid execution, approvals and the Treasury report.

Today, we will hear from the negotiators, themselves, the people who were on the scene. We will also hear from other witnesses that many have waited for—the experts on the CS gas, its toxicity, its risks and its uses. These experts are of all stripes. My guess is that today's testimony will be lively, to say the least.

As we move into the tragic days and hours before the deadly fire, I think there will be a quickening of the tempo. These are the days and the hours when if different decisions had been made we would not all now be talking about the loss of over 80 American lives, including 22 innocent children.

Some key questions are, what was the FBI's master strategy, how was it conceived, and by whom? When was the CS gas included in the plan? Was it in the plan before April 14, when the FBI tells lawyers for the Davidians that they have lots of time to reach a negotiated closure or was it afterwards?

Who accelerated the use of the CS on that fateful day, April 19? Who decided to inject it into the compound with the tanks, and then to crash down the walls with the tanks, and then to insert CS gas by coke-bottle-sized ferret rounds of projectiles, 350 of them?

Who approved all of this? And when the facts are out, who gave the final go-ahead, the top signoff, and on what information?

Constitutional oversight is not always enjoyable. We certainly have been in these hearings for stretches of 11, 12 and 13 hours straight over the past 5 days. But it is the people of this Nation that we serve, we serve them and not the other way around.

If the search for the truth is what it is all about, there is no place for shortcuts, politics, or partisan exchanges. That has occurred and that is regrettable, but we need to stay in focus and this is critical.

I guess as I drove into work listening to some tapes last night and this morning, the scary thing that I am trying to deal with is that the fact that over 80 Americans were killed and I have a tremendous respect for the FBI, as do most Americans. I have a tremendous respect for our military and the question that is eating away at me, with all the evidence that we will be seeing and have seen, was a military-style operation justified? Could we have done a better job of listening, and could this tragedy been avoided? Were there different alternatives and why were they rejected?

That is what these hearings are all about—getting at the truth so that we can change further events. No one is above the law, and accountability and responsibility must be assigned in order to restore credibility.

That is what we are trying to do here. We have total respect for what you do day in and day out and we want to make sure that credibility is maintained for many, many years to come.

Thank you, Mr. Chairman.

Mr. McCollum. Thank you, Mr. Zeliff.

Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman.

I want to thank also, join in thanking the witnesses for waiting another day. Let me start with yesterday.

I have never really sat through a hearing the likes of yesterday; 6½ hours of defense lawyers, no rebuttal, no one on the other side, etc. Yesterday was the most unbalanced day we have had in the Waco hearings so far. And I think it was unfortunate that it occurred.

The domination by one-sided defense lawyers, their marathons, their ways of sliding over the truth was very unfortunate. They called a man, who hoarded illegal guns and handgrenades, peaceful. They smeared a brave young woman who testified to a rape by David Koresh. They said they did not believe her. And they even implied that the Davidians were justified in killing ATF agents by launching theories of self defense.

You know, ladies and gentlemen, their basis for this was looking at bullet holes in doors. Well, let me tell you, I would rather have the eyewitnesses to the bullets, than eyewitnesses to bullet holes any day of the week.

Again, the fastness and looseness with the truth will be revealed today. One of the key points yesterday was Mr. Zimmermann's testimony that some faceless, Washington bureaucrat stopped Mr. Jamar from going along with the Zimmermann plan. Well, we will learn frankly today that that person does not exist. I asked Mr. Zimmermann about it. I asked if he had a name and he said, no. I asked him if he had any evidence that Mr. Jamar was overruled, and he said, no.

But in the defense lawyer way, just throw it out there, confuse things and see what happens. Well, we will ask Mr. Jamar today and we will find out his answer whether Washington overruled him. Again, more sliding over the truth.

And finally this idea of the FBI having handgrenades, not flashbangs, but handgrenades that Mr. DeGuerin seemed to support. No one I can speak to and I spoke to a lot of members who were experts on military and on the FBI, the other side, no one I can speak to would think it even closely credible that the FBI would use handgrenades in the attack.

Furthermore, the pineapple type of grenades that Koresh had did not look like flashbangs. And finally, coup de grace, Mr. DeGuerin said flashbangers can kill, injure, maim. Anyone who knows anything about these things knows they cannot. In fact, their typical use is on an airliner, when there is a terrorist, to roll them down the aisle amidst the passengers so they will make a big noise, divert the terrorist and be used. That cannot be a harmful type of thing.

So, today, we are going to hear convincing refutations of the line of baloney put out by Mr. Zimmermann and Mr. DeGuerin.

I want to say when my colleagues from the other side give credibility by saying, for instance, that Mr. Koresh seemed willing to come out based on testimony of his defense lawyers, I think they are stretching credibility altogether. It clearly does not make the case.

Now, one other thing I would like to say here. We are hearing a lot of talk in opening statements how everyone is defending law enforcement and certainly law enforcement should be criticized when they are wrong. But certain other things go over the line as well.

One Member of the other side, while professing to defend law enforcement, passed out a flyer promoting the theory of justifiable homicide. Justifiable homicide, saying that the Davidians had a right to shoot. To me that is disgraceful.

You cannot say out of one side of your mouth you are defending law enforcement and out of the second side say that this was a case of justifiable homicide. So let us stop this kind of baloney, total baloney.

As to who shot first? Well, there is not one scintilla of credible evidence to support the theory that the ATF shot first. We heard that from the Texas Rangers. There were three reporters on the scene, each of whom testified at the trial that the Davidians fired first. All of the agents testified that the Davidians shot first. And Kathy Schroeder testified at her trial that an ambush was laid that morning.

Once again, I want to compliment my colleague, Bill McCollum, who said today that he was convinced that the ATF did not fire first, that Koresh did, but that is after the cow is out of the barn door. In other words, it is floating out there. All this talk, all these theories, and again, I have to repeat my fear that to the handful of Americans who are paranoid and have views that the Government is the incarnate of evil, that kind of irresponsible statement is very harmful to all Americans.

And last, today we are going to hear the beginnings of what happened with the gas. The myth of the horrible CS gas will be deflated by experts today. Like so many other accusations, puffed up before these hearings, the experts will show that although CS gas is hardly a pleasant experience, it was not an unreasonable choice in the light of all the other factors.

Thank you, Mr. Chairman.

Mr. McCollum. You are quite welcome, Mr. Schumer. I do, because you used my name, just want to clarify one thing about what I said regarding the shooting and who shot first. I just was implying, which is true, that if I were sitting on a jury listening to the witnesses, based on my assessment of credibility, I would undoubtedly come down, after this stage, at this point on the side of the ATF.

Mr. Schumer. I compliment you on that.

Mr. McCollum. But I would say, and I do want to make this clear, that there are reasons which have been given before us for some who will continue to say and I can understand why they would that they have doubts about who shot first.

I think reasonable people can differ in coming to the conclusions they would come on that point. In other words, I do not think we will ever have any absolutely definitive evidence of who shot first that will satisfy everybody involved. So that is really what I had in mind with that.

And I am going to, at this point, introduce the witnesses. We have only one panel today. I am going to introduce you and then

after I do so we need to swear you in and then we will commence the questioning.

Peter Smerick is a former FBI Special Agent and was a former criminal investigative analyst for the Investigative Support Unit of the National Center for the Analysis of Violent Crimes. He is our first witness today.

Jim Cavanaugh is a Special Agent with the Bureau of Alcohol, Tobacco and Firearms. He was present at Waco on February 28 and began the negotiations with the Davidians following the failed raid.

Byron Sage is the Supervisory Special Resident Agent in Charge of the FBI's Austin office. He was one of the first FBI agents on the scene at Mount Carmel on February 28 and was the FBI's lead negotiator during the 51-day standoff.

Gary Noesner is a Supervisory Special Agent at the FBI Academy in Quantico, VA. He was one of two negotiation supervisors during the standoff in Waco.

And Jeffrey Jamar was the Special Agent in Charge of the FBI's San Antonio Office. He was the overall commander of the FBI personnel during the siege at Mount Carmel.

Also with us on this panel because he could not join us this afternoon, and was scheduled to do so, is Mr. Ronald McCarthy, a former officer with the Los Angeles Police Department who is here with us, as well.

[Witnesses sworn.]

Mr. MCCOLLUM. Please be seated.

I recognize for the first round of questioning, Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman.

Let me just say before I yield my time that the gentleman from New York was very hard on defense attorneys and suggested there was a lot of sliding over the truth. I would just suggest the gentleman from New York makes a pretty good defense attorney himself in that he has stressed certain elements of the testimony and tended to down play other elements of the testimony.

If there were, in fact, perjury committed by the gentlemen who testified yesterday under oath, I think we should find out if, in fact, untruths were stated in the testimony yesterday.

At this point, I would like to yield the balance of my time to the gentleman from North Carolina, Mr. Heineman.

Mr. HEINEMAN. Thank you, Mr. Clinger.

Let me say at the opening of today's hearings that where I will take in any part of questioning the panel I have, over the course of my law enforcement years, had the pleasure of working with, not only ATF but with the FBI on many occasions.

I see Mr. Noesner here who 13 years ago came to Raleigh, NC, to assist me in a highly emotional hostage situation which took place over a full weekend, 72 hours. And I would have to say that that was one of the highlights of my career as it relates to working in a joint effort with the FBI. And I say that now and I have said that for the past 13 years and I do not generally pass out a lot of compliments. But, Mr. Noesner, welcome. It is good to see you here today.

What I would like to do with my opening is just to lay a foundation from February 28 up to April 19, so that we can have a chro-

nology and know where the pieces fit. And with that, I would like to get Mr. Cavanaugh, who is from ATF and was on the scene. In fact, was in that observation house as the raid took place.

If you could tell us today, from that point where you knew you were in trouble, what happened to the point where you called for FBI, if you, in fact, were the one that did call for FBI.

STATEMENT OF JAMES CAVANAUGH, FORMER ASSISTANT SPECIAL AGENT IN CHARGE, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DALLAS, TX

Mr. CAVANAUGH. Well, Chief, we were in an unbelievable situation. I hope you can understand that it is not a good memory for me. I had 75 agents stretched out in front of me. I had a box seat. And when we drove up the Davidians opened fire and I am sickened by any other assertion. I sat there and I watched it. And the gunfire came through those double white doors. I watched it. It pushed the doors against their jambs out toward the agents. And, in fact, two agents were shot there, Jerry Petrilli was shot in the chest and his vest and knocked down. I think the other witness, Ballesteros, was also here and he was shot in the finger.

It is unbelievable that that is what happened. And anybody else who says anything different, they shot first. And if I thought that an ATF agent would drive up in front of a structure and shoot, I would throw my badge in the garbage. It did not happen.

Anyway, we were taking an awful beating, Chief. They were throwing everything at us. And their guns sounded like cannons and our guns sounded like pop-guns. We had 9mms and they were hitting us with 223, AK–47's, .50 calibers. It was more than you could imagine.

Nobody was going to get us out. The McLennan County Sheriff's Office, who always did a good job in this case, could not get us out of this. We could not call 911. I mean we could not call anybody. We had to get out of this ourselves.

So many men were hurt and wounded and laying down there that I had to call into the compound. I am a trained negotiator. It just was not my first negotiation. And I called into the compound and a fellow answered the phone. He said, hello. And I said in a calm voice, "This is Jim Cavanaugh, from the ATF. I want to speak to David."

Well, the fellow did not even answer. He just dropped the phone and ran away. I could hear him running down the hallway. I could hear the machineguns inside echoing through the phone and I could hear them outside and watch them shooting our agents.

In a few minutes, a person came to the phone. It was Steven Schneider. And he started screaming through the phone for us to get off the property, that we had no right to be there, to get off the property immediately.

I tried to stay calm. I used a calm voice. I said, "Steve, we have to talk. We have to work this out. You and I have to work this out. People are dying, people are hurt, we need to stop the shooting."

He was very charged, as you can imagine. He was very excited. He did not want to listen. He just wanted to say get off the property, get off the property.

We talked. I kept trying to reassure him. He wanted to know what we were doing there. I told him we were Federal officers, we had a search warrant. That I wanted him to work out with me a cease fire. And he agreed to talk about it, once I got him a little bit calmed down.

He agreed to a cease fire after a few minutes more of coaxing and then he just said, "OK, you have the cease fire now."

I said, "Well, there is a wounded agent." We had already tried to get our wounded agent who was trapped in an alcove back there, next to the tower, Agent Kenny King. We tried to move a team to get him but they just opened up on us and we could not get him.

Mr. MCCOLLUM. Take your time, Mr. Cavanaugh.

Mr. HEINEMAN. Do you have those pictures of the compound? Can you bring that and show us the first picture with the ATF agents behind vehicles? We looked at this yesterday and I questioned the two lawyers that were here and they were in agreement that the ATF was in a defensive position, that they had not rushed the door, and they did agree that there were shots coming from inside that compound through the door.

And I think if we can focus on that picture we can see that ATF, still running to get behind the vehicles, one officer grabbing for his gun which was apparently holstered. And there is another picture right behind that, and if you can show that of ATF agents on the ground, some being carried from their position, dragged over. That had to be the next frame or the frame after.

I am sorry.

Mr. CAVANAUGH. I am sorry, Chief. I can clear that up for you. That is a much misrepresentation of the fact that, as you look at that. That first picture that was shown there is very early in the gun fight and that was taken by the reporters who were in the bar ditch, next to the undercover house. We did not take that photograph. That was very early in the gun fight. You can see there is no bullet holes in walls, you can see the agents are just taking cover and position. You can see all the windows are slightly open and that is where we were taking fire.

The next picture, as it was presented as being here is all the bullet holes, that is 3 hours later. We did not achieve a cease-fire to retrieve those wounded until just a few minutes before 1 o'clock. I achieved it, I remember. That is 3 hours later. Of course, there are a lot of bullet holes in the wall, they were shooting us.

And the Davidians were standing in those windows back from the windows. Because our long riflemen were keeping them back and they were shooting through the walls, down at our people laying on the ground. That is what all that gunfire is. I am sure there are some return rounds from ATF because we were laying on the ground, hiding behind trucks and shooting at them.

Mr. HEINEMAN. Well, I see I have the red light and I would like to pick up this line of questioning when I have my next 5 minutes. Thank you.

Mr. MCCOLLUM. Mr. Schumer, you are recognized for 5 minutes.

Mr. SCHUMER. Thank you.

And, again, Mr. Cavanaugh, I want to thank you. I mean I cannot have the same emotion you do, having sat through this, but I

think I share your frustration, as I did Mr. Buford and Mr. Ballesteros, hearing this kind of either/or, well, some is right.

How do you feel when you hear some people, even on this panel, sort of saying, well, it is unclear who fired first?

Mr. CAVANAUGH. Congressman, I respect Congress and the right to ask those questions. But I know they get that information from people and I am just sickened by it. It would not be allowed in a court of law. It is not the facts. We did not shoot first, we did not.

Mr. SCHUMER. And is there any way that somebody could believe that justifiable homicide—as the lawyers sort of implied yesterday and as a leaflet was passed out by one of my colleagues here today, late last night—could be used as a defense here?

Mr. CAVANAUGH. No, Mr. Schumer. I think that what needs not to be forgotten here is that this man was alerted to law enforcement's arrival 45 minutes. That was our mistake that we went. He knew law enforcement was coming. And our paradigm, if you will, our mistake was that we thought that that compound would bristle with guns. That he would be defiant. That he would get his mighty men and be defiant, not to let law enforcement come on that property.

And he was so diabolical that he laid an ambush—and I have heard some of the members say yesterday, how could anyone shoot through a door? Watch the films. Every American has seen them 100 times. Our agent on the roof, the bullets coming through the walls, the bullets coming through the ceilings. They shot through the doors, they shot through the ceilings.

And assertions that we had helicopters or men from Mars shooting at them is nonsense. Our agents were laying on the ground shooting at a tower three stories high. Should we be surprised there is bullets in the roof?

Mr. SCHUMER. Of course, I agree with you, Mr. Cavanaugh.

Thank you.

Mr. CAVANAUGH. I am sorry.

Mr. SCHUMER. I just have a few questions for Mr. Jamar.

Mr. Jamar, we heard Mr. Zimmermann's tale yesterday and that is what I would call it about a—well, the tale part is the Washington bureaucrat—but so let me first ask you this question. In rejecting Mr. Zimmermann's plan and Mr. Koresh's plan to leave, did you make that decision yourself or were you overruled by a shameless—I think was the adjective—faceless, Washington bureaucrat?

STATEMENT OF JEFFREY JAMAR, FORMER SPECIAL AGENT IN CHARGE, FEDERAL BUREAU OF INVESTIGATION, SAN ANTONIO, TX

Mr. JAMAR. To better understand it, let me describe how our relationship started and how it came to a——

Mr. SCHUMER. I am going to ask you that at the end, I am going to give you a chance a little later in the questioning. Just, if you could answer that question?

Mr. JAMAR. The decision to recommend a gas plan was made in March, I made the decision.

Mr. SCHUMER. Right. But I am asking you, the decision not to wait for him to do his seven seals, the plan—I do not know if you saw the testimony—but Mr. Zimmermann said that on April, I be-

lieve it was 15, the 14, in the negotiations he had a plan and they were all going to march out with one lawyer at the front and one lawyer at the back after Koresh finished writing his Seven Seals.

And then he said, you were sympathetic to that plan but a faceless Washington bureaucrat overruled you. I do not know where he came up with that, and I want to know the truth here.

Mr. JAMAR. Well, the plan, the surrender plan was discussed in late March, early April with them, not April 14. The implication of that, that plan, that surrender plan was discussed that day. It was not. This was a week before, more than a week before.

What happened, we went through that surrender plan because you want to do that because you plant surrender in the person's mind.

Mr. SCHUMER. Right.

Mr. JAMAR. The only difference between that surrender plan and our March 2 surrender plan is that we inserted the lawyers.

Mr. SCHUMER. I see.

Mr. JAMAR. OK. They left on April 4 dejected. They did their best. I give them all the credit in the world for the effort that they made to resolve that.

In the meantime, DeGuerin came up with the contacts with Phil Arnold about the idea of finding another interpretation of the seals in order to where Koresh will surrender.

Mr. SCHUMER. Right.

Mr. JAMAR. That was told to us on April 14.

Mr. SCHUMER. That is what we are talking about.

Mr. JAMAR. Now, when I said there was plenty of time, there was no approval of our plan at that time. Had Koresh and anyone else given any indication that there was an earnest, sincere effort to prepare any manuscripts then we would have delayed it. But it was continuous delay.

There was nothing that happened that weekend that made me think that anything had changed. In fact, if you examine the negotiation tapes it will be clear that they always have a way of do not expect anything soon, it may be a year. I have not seen the first page to edit.

Mr. SCHUMER. They said maybe a year, it would take them maybe a year?

Mr. JAMAR. Well, no, no, in that context the——

Mr. SCHUMER. That is it.

Mr. JAMAR. In that context, it was just a discussion with Judy Schneider about how long it would take her to type these on a manual typewriter.

Mr. SCHUMER. Right. What was Koresh's and Schneider's reaction to the lawyers' suggestion that they surrender?

Mr. JAMAR. Well, they were as manipulative of them as they were of us. They would build their spirits up. I can remember one instance when Dick DeGuerin came out and, believe me, he put his best effort in and I give him all the credit in the world for the effort he made. He would build him up and then cut his legs out from under him.

I can remember one instance——

Mr. SCHUMER. Koresh would?

Mr. JAMAR. Koresh would. I remember one instance where he said he was making a point with him and Koresh feigned illness. It happened to us all the time.

Mr. SCHUMER. Did you hear in conversations when Koresh, when the lawyers were not around that they said or indicated that they were just sort of manipulating the lawyers and not really interested and sort of laughing at the lawyers?

Mr. JAMAR. By implication, yes.

Mr. SCHUMER. Explain that, please.

Mr. JAMAR. Well, they would be talking about the fees, the ridiculous fees. I do not have a real clear statement for you, it is just their demeanor and the attitude we picked up from the conversations with them.

Mr. SCHUMER. So it is your belief that even on April 15, Koresh and his followers had no intention of coming out, is that correct, sir?

Mr. JAMAR. No. I concluded that very much and that did not stop me from still trying. It did not stop me from going against the wishes of every other person, except maybe Bob Ricks, to let the lawyers go in and possibly help destroy the crime scene. I had not given up.

Mr. SCHUMER. Thank you.

Mr. MCCOLLUM. Thank you, Mr. Schumer.

Mr. Heineman.

Mr. HEINEMAN. Thank you, Mr. Chairman.

Mr. Cavanaugh, at some point, you established a rapport with David Koresh?

Mr. CAVANAUGH. Yes, Chief. I will try to go through it as little quicker, I am sorry.

Mr. HEINEMAN. Much quicker, if you would?

Mr. CAVANAUGH. Yes. I established the cease-fire. I established to get our wounded agent out, Kenny King. I established then to get an ambulance in. They thought it was an armored car. I then established to move all the wounded agents, which is this photograph you see, back behind a giant bus that was parked in the driveway.

So by this time it was getting a little bit easier for me because the cease-fire broke down three times, so we negotiated through a cease-fire. There would be some small gun battles and then the agent out, the ambulance in, all the wounded out, and then the last thing was to get the bodies of the agents off the roof.

Mr. HEINEMAN. Do you feel you had a rapport with David Koresh?

Mr. CAVANAUGH. Yes, sir.

Mr. HEINEMAN. At what point in time did a call get made to the FBI for their assistance in negotiating?

Mr. CAVANAUGH. Mr. Sage was on another phone that afternoon from another location, but I did not—and we had some contact, but it was not until Sunday night, probably about 11 o'clock, that Gary Noesner from the FBI showed up at the ATF command post to help us and to take over negotiations.

Mr. HEINEMAN. OK, so at that point, you relinquished your job as negotiator to either Gary or someone that he designated?

Mr. CAVANAUGH. No, Chief. I never relinquished it. For about a week I stayed on the phone from that morning at 10 o'clock until 2:30 the next morning.

Mr. HEINEMAN. Well, at what point did the FBI negotiators, other than Gary, at what point did Mr. Jamar come in?

Mr. CAVANAUGH. Well, they were all there, and I would say they took over Monday officially as in charge of the negotiations. And they left me on the daytime as the primary negotiator and there was an FBI agent at night as the primary negotiator.

Mr. HEINEMAN. So you negotiated for perhaps a week after the FBI came and took charge?

Mr. CAVANAUGH. That is right.

Mr. HEINEMAN. Is that correct?

Mr. CAVANAUGH. Yes, sir.

Mr. HEINEMAN. Mr. Jamar, at the point where you folks came in, you were designated in charge of the FBI operations at the scene?

Mr. JAMAR. Yes, sir.

Mr. HEINEMAN. And you established a command post?

Mr. JAMAR. Yes, very near the ATF command post on the TSTC campus.

Mr. HEINEMAN. So you only had one command post?

Mr. JAMAR. Yes, sir.

Mr. HEINEMAN. How did you set up that command post relative to the negotiating team and the tactical team?

Mr. JAMAR. There was a hanger on the TSTC campus which had been an Air Force base. And people will always be indebted to Chrysler Technologies, just handed over office space to us.

We had an upstairs floor where we had a corner office for myself and the other SAC's. We had a larger room for the LAC–B squad, for a squad of agents in the nerve center of the command post. Right out, across the hall, from my office was the negotiation room.

Next to that room we had a smaller office where they could talk and then there was another office we ultimately used to monitor the microphones. Next to that was a larger conference-type room where we kept the aviation people primarily, and then next to that room was the HRT, the Hostage Rescue Teams' intelligence.

Mr. HEINEMAN. Well, could you tell us whether the hostage negotiators and the tactical team shared the same office?

Mr. CAVANAUGH. We had a member of the hostage rescue team in the negotiation room all the time.

Mr. HEINEMAN. OK. In that command post, was that in sight of the compound or was that close to the, where the staging area was?

Mr. CAVANAUGH. No, sir. It was about 5 miles as the crow flies. Forward, near the compound, we had trailers under a hill about, I would guess, 1,000 meters from the compound. And there were several, all the agencies had some there and that was our forward command post.

Mr. HEINEMAN. Mr. Jamar, did you have any training in hostage negotiation?

Mr. JAMAR. No. I never entered into any either. I left that to the experts.

Mr. HEINEMAN. Did you view the people inside the compound as hostages?

Mr. JAMAR. No. I viewed the situation as a barricaded subject. I think I said on one press briefing that I considered—and then somebody asked if the children were hostages and I said they were hostages to the circumstance.

Mr. BARR. Sorry, I did not hear that.

Mr. JAMAR. They were hostages to the circumstances, Mr. Barr.

Mr. HEINEMAN. Did you have, in that ensuing week, when, after the shoot-out, was Mr. Cavanaugh in your command post at that time——

Mr. JAMAR. [continuing]. Yes, sir, we moved——

Mr. HEINEMAN. Up to negotiating?

Mr. JAMAR. Yes, sir, we moved the phone lines to the central place in our command post. And Mr. Cavanaugh came with them, yes, sir.

Mr. HEINEMAN. Did you give special directions to the negotiators and also special directions to the tactical teams?

Mr. JAMAR. We each, we all had goals. You know, the ultimate goals we had we all agreed with. I left the day-to-day operations of the negotiations and the conduct of the negotiations to include who did the negotiations, how many and everything else to Mr. Noesner and the others, and Mr. Sage, I left it to them to run that and I just gave them the support that they needed.

Mr. HEINEMAN. You may have said this, did you have an intelligence component in that?

Mr. JAMAR. Yes, sir, in the nerve center I would call it, in the main room we had, we brought everything together there. In addition to that, the Hostage Rescue Team had an intelligence operation right there in the command post, very near by.

Mr. HEINEMAN. And did you have meetings, joint meetings during this time?

Mr. JAMAR. We would have meetings with briefings, after a while, once we got established. I would like to have the opportunity some time to describe what it was like when we arrived. I think it would be very helpful.

Mr. HEINEMAN. I am sure someone will pick up on that.

Mr. JAMAR. Yes, but we would have meetings, after we got established—it took days to get established—where the supervisors of each component would get together and report and discuss matters. And we would have various meetings. It would be meetings, primarily for the first 2 or 3 weeks, were always among the negotiators. We did not have——

Mr. HEINEMAN. Excuse me, I think I have one more question. I have to beat the red light.

Mr. JAMAR. OK.

Mr. HEINEMAN. Who did you report to directly?

Mr. JAMAR. When I reported to headquarters, most of the time, the person I spoke with is Assistant Director of the Criminal Investigative Division at the time, Larry Potts. At night, his deputy would be Danny Coleson, who was there.

Mr. HEINEMAN. So you were in constant contact with Washington?

Mr. JAMAR. Numerous times a day.

Mr. HEINEMAN. Thank you.

Mr. MCCOLLUM. Thank you, Mr. Heineman.

Mrs. Collins.

Mrs. COLLINS of Illinois. Thank you, Mr. Chairman.

Mr. Cavanaugh, around March 2, Koresh told you that he was going to come out if you played a tape that he made. Can you tell us about that conversation?

Mr. CAVANAUGH. Yes, Congresswoman.

We had worked on him pretty heavy for about 3 days, trying to get him to surrender en masse. We are having a very successful release of children. We had six on Sunday, six on Monday, I think we had four on Tuesday, so we were feeling very good about that, the fact that he was letting all these children out.

And then we had arranged that negotiation to release the children, based on the fact that we would play his Biblical message over the AM radio, and every time we played it two children would come out.

Mrs. COLLINS of Illinois. Was this biblical message on the tape and was this to be his analysis of his religious philosophy?

Mr. CAVANAUGH. Yes. Now, this one you are talking about, Congresswoman, was a much longer message, an hour or so message.

Mrs. COLLINS of Illinois. I see. Did you listen to the tape?

Mr. CAVANAUGH. It has been 2 years ago since I listened.

Mrs. COLLINS of Illinois. But you did listen to the tape?

Mr. CAVANAUGH. Yes.

Mrs. COLLINS of Illinois. Would you be able to remember anything so you could summarize for us your impressions of what he said on that tape?

Mr. CAVANAUGH. I am not a theologian, and all during this process with Koresh I made that clear to him, that I was just a policeman. And I tried to understand his religious beliefs. It was very difficult. It was very difficult to understand what he would tell you.

Basically, I think he gave us the unsolvable riddle. I am God, you prove I am not. That was basically what we faced and most of that message had to do with the fact that he believed he was the Lamb of God. People have said he believed he was Christ. He did not believe he was Christ. He believed he was the Lamb of God, the person to open the Seventh Seal. And he would go on and talk about that. I am sure theologians could be more indepth with you on it.

Mrs. COLLINS of Illinois. For a while did it seem to you that Koresh was really going to come out?

Mr. CAVANAUGH. Yes, I believed so.

Mrs. COLLINS of Illinois. Were the Davidians lined up to come out, to your knowledge?

Mr. CAVANAUGH. On that day, Congresswoman, they were lined up to come out. They had their jackets on. Koresh was—I believe that was our last best chance to get him to ever come out. I do not believe that he, once he did not come out on that Tuesday—the reasons I say that, he was fatigued. He had been in a gun battle on Sunday. I shared the feelings. I was in the same gun battle. He was fatigued. He was wounded. He was hurt. We had been working on him for 3 days. This was our chance, I thought, to get him out.

And if you go back over those tapes, you know, you can see how the process worked. But at the very last moment he could not do it. And Mr. Smerick, who was there with us, gave us an analysis, and I still believe that his analysis was the right analysis. And he

said, when he lined up with all the children and the women in the hallway, and they all came by to kiss his ring, and that is detailed in that transcript ad nauseam, that he could not leave this place, where he was God, with unlimited sexual favors, unlimited being the Messiah, and walk out to a cold jail cell.

He could not do it at the last minute, and I believe that was the case. I think one Davidian later said they thought that was a suicide pact, but I have never been convinced myself that it was.

Mrs. COLLINS of Illinois. On the day of the raid, you had painted a picture for us of how devastating it actually was, that there were agents lying around probably calling for help. At that time you had to begin negotiations with Koresh, how did—this had to be very difficult for you, was it not?

Mr. CAVANAUGH. It was very difficult and I am sorry to get a little sad about it, but I had a radio mike in one ear with an agent pleading for his life and I had this guy on the phone who thought he was God. And if you can picture yourself in that situation, you know, I just think it was unbelievable.

And if I could not negotiate it, how was I going to get this guy out and how many agents was I going to send to get him? How many people would die? I mean I felt like a ship's captain, how many people are going to get in the boat?

So I put all my energy into negotiating it because if I did not this guy in my ear, my friend, is going to die.

Mrs. COLLINS of Illinois. Did you feel that you were in a physical danger of being shot by Koresh or any of the Davidians at that time?

Mr. CAVANAUGH. The rounds were coming through the walls on my position, while I was there.

Mrs. COLLINS of Illinois. Last week we heard young 14-year-old Kiri Jewell, who was sexually molested by Mr. Koresh when she was 10. Based on her personal experience with Koresh, he was not coming out. Would you agree with her statement?

Mr. CAVANAUGH. Yes, Congresswoman, I agree. I do not think the Archangel Gabriel could have talked that guy out of there.

Mrs. COLLINS of Illinois. Mr. Sage, there is a very controversial picture of you coming out of the negotiations facility with the burning compound in the background. It has been called a trophy picture. I want to give you an opportunity to explain to us why you had that picture taken, Mr. Sage?

STATEMENT OF BYRON SAGE, SUPERVISORY SPECIAL RESIDENT AGENT, FEDERAL BUREAU INVESTIGATION, AUSTIN, TX

Mr. SAGE. I appreciate the opportunity. I have seen it as well and it is very bothersome. First of all, if I can back up a little bit. I was there for the entire 51 days.

I arrived at approximately 11 o'clock in the morning on the 28th of February and in very brief summary I will say without hesitation that myself, along with approximately 50 negotiators from the FBI, and a number of local county and State agencies, gave 110 percent of our effort—and that, believe it or not, is an understatement——

For one purpose only and that was the safe resolution of this situation. Paramount in that focus, in my mind constantly, was the safety of those children. When that picture was taken, it was taken at approximately 12:30, 12:35 on April 19. I had just finished nearly 6 continuous hours of broadcasting starting off with instructions and then requests, and ultimately, please. Literally begging David and, if he was not capable of doing it, then Steve Schneider not to end it this way. This was not the way to end it. It was no one's intention to end it in that fashion.

When that picture was taken I had just completed what Jim Cavanaugh had started the morning of the 28th of February and that was an absolute heartfelt commitment to try and resolve this matter. It had just failed miserably.

I was crushed. I think emotionally everyone was spent, physically, emotionally, everyone, I could never express the full range of emotions that were going through me. As I exited from, what we referred to as, Sierra One Alpha, which was the forward position immediately adjacent to the former ATF undercover house, a fellow negotiator, I believe, hollered out to me, I turned briefly and that photograph was taken.

Mrs. COLLINS of Illinois. So it was not a "posed" photograph by any means?

Mr. SAGE. Congresswoman, I can tell you without hesitation that that is the furthest thing from a trophy photograph. I hope to have an opportunity to show you a photograph of a face-to-face meeting that I had with Steve Schneider and Wayne Martin and the sheriff of McLennan County. If there is a trophy photograph, which I find the term first of all to be very offensive, that would be it.

Mrs. COLLINS of Illinois. I would too.

Mr. SAGE. Because that photograph represents the commitment without hesitation of all the negotiators involved. I just happened to be fortunate enough to do it.

I will say one thing, please, I would have given my life to save those kids. That photograph is anything but a trophy photograph.

Mrs. COLLINS of Illinois. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you, Mrs. Collins.

Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman.

I am going to try to move through some questions rather quickly. Mr. Sage, one of my colleagues described the testimony of Mr. Zimmermann and Mr. DeGuerin, yesterday, as lying baloney.

I do not believe that testimony was lying baloney any more than I believe that your testimony today or that of any of your colleagues is going to be lying baloney.

I believe you wanted to save those children. As a matter of fact, your report, the Department of Justice report says the negotiator's goal was to prevent the further loss of life, was that your goal?

Mr. SAGE. Absolutely.

Mr. SHADEGG. Mr. Jamar, was that your goal?

Mr. JAMAR. Yes, sir.

Mr. SHADEGG. Mr. Smerick, you were kind of a lead consultant on negotiating, was saving life your goal?

Mr. SMERICK. Absolutely, sir.

Mr. SHADEGG. OK. Mr. Jamar, according to the report that the Department of Justice prepared, Director Sessions and President Clinton met on March 1 and discussed the Bureau's strategy for handling this crisis. Sessions described it as a waiting strategy, whereby the FBI would negotiate, watch and contain.

Were you aware of those discussions?

Mr. JAMAR. The communication to me was that the White House, in that term, the White House communicated to the FBI that we would do nothing beyond negotiate without first discussing it.

Mr. SHADEGG. OK. The report goes on to say the Acting Attorney General Gerson advised Sessions that the President approved this proposed waiting strategy involving negotiating, watching, and containing. And then asked to be advised if that ever changed. Were you aware of that as well?

Mr. JAMAR. The information I got was if you depart from negotiation, notify. We also had the authority to react in emergency situations without consulting.

Mr. SHADEGG. There is a footnote to that effect, as a matter of fact?

Mr. JAMAR. Yes.

Mr. SHADEGG. OK. Again, the characterization of lying baloney, do you believe the testimony that came in yesterday was lying baloney?

Mr. JAMAR. I would not characterize anyone's testimony as lying baloney that I heard yesterday. I think there is a tendency to get rolling when you start talking. I think one of the witnesses spent a lot of his time doing that yesterday. I think that, like I said a while ago, the implication that there was a plan and it was April 14 is simply not the case. That was all done before——

Mr. SHADEGG. Well, we will get into that but——

Mr. JAMAR. Yes.

Mr. SHADEGG [continuing]. One of the things that was said yesterday by Mr. Zimmermann was that he had the highest regard for your integrity, Mr. Jamar, and did not believe that you ever intentionally deceived him. I presume you do not think that was lying baloney?

Mr. JAMAR. Well, certainly not because I did not deceive him.

Mr. SHADEGG. OK. Now, there was specific testimony and the term is not a faceless bureaucrat, there was, in fact, a statement that some desk-bound bureaucrat in Washington changed the plan.

I would like to get into that and figure out why, at least, this Mr. Zimmermann believes that.

Mr. DeGuerin testified yesterday, very directly and very specifically, that you indicated to him, when they came out with this new strategy to allow Mr. Koresh to write out what he had to write out that that would lead to his surrender. That when he described all that to you that occurred on the 14th of April?

Mr. JAMAR. Correct.

Mr. SHADEGG. And, at that point in time, there had already been, as I understand it, a meeting in Washington on April 12, where the gas plan was described to the Attorney General, is that also correct?

Mr. JAMAR. Yes.

We submitted it, the plan that became the plan ultimately, on April 19, with several modifications. But the original submission by us in Waco headquarters that was sent in on March 27.

Mr. SHADEGG. It had been sent in on March 27 for approval higher up?

Mr. JAMAR. Yes, sir.

Mr. SHADEGG. OK. And, to your knowledge, it was taken to the Attorney General on Monday, April 12, is that right?

Mr. JAMAR. I do not know the precise date, but there were numerous discussions and I think that is probably correct.

Mr. SHADEGG. Well, the Attorney General will be here and we can ask her that.

Mr. JAMAR. OK.

Mr. SHADEGG. OK. We move forward Monday, April 12, we move forward to Wednesday, April 14. DeGuerin and Zimmermann go in and the come out with this whole new plan. They describe it to you. You say to them, "You have all the time in the world."

Was that a misrepresentation on your part? Why did you make that statement to them?

Mr. JAMAR. I think it was not a misrepresentation because what I said was, if there is writing of a manuscript, if there is progress, we will take the time.

But on April 14, I did not know the plan was going to be approved, number one.

Mr. SHADEGG. Precisely. So at that point in time when you had that conversation, you were not aware that the plan that had been lodged in Washington quite some time earlier for a more confrontational result had, in fact, been approved?

Mr. JAMAR. Yes.

Mr. SHADEGG. As a matter of fact, it had not been approved as of the 14th, had it?

Mr. JAMAR. No. It was not approved until the 17th.

Mr. SHADEGG. And executed on the 19th?

Mr. JAMAR. Correct.

Mr. SHADEGG. OK.

So it was your hope on, you still had some hope on the 14th that we might make progress, we might get to a negotiated settlement, is that right?

Mr. JAMAR. Oh, I had hope. I submitted the plan on the 27th and I had Dick DeGuerin go in the crime scene on the 28th, the 29th.

Mr. SHADEGG. And they came out with this whole new plan on the 14th that said, we may be able to make this. This is a real breakthrough. This follows with what is in Koresh's mind.

Now, my question is following that conversation on the 14th, what steps did you take—later you got advised that the Department of Justice had approved the gas plan?

Mr. JAMAR. Yes.

Mr. SHADEGG. What steps did you take to advise Justice of the new plan? That is of this new proposal by Koresh and by Zimmermann and DeGuerin which they later felt betrayed about?

Mr. JAMAR. I am not sure that, when you say notify the Department, that proposal by them would have been routinely sent through our channels in the normal discussion. I do not know how it was done specifically. I do not know that.

Mr. SHADEGG. So do you know if Attorney General Reno was ever advised that there was this new development before she made her decision?

Mr. JAMAR. I do not know. I doubt it because it was not, from our understanding of it and the judgment was looking at what they were doing, maybe she was not. I do now know. But there was not any reason to because it was not a serious plan. It was just another delaying tactic.

Mr. SHADEGG. Well, clearly Mr. DeGuerin and Mr. Zimmermann, by the emotion and the passion they brought here and the feeling that you had betrayed them. They said you never lied to them before and now they felt you lied to them.

And they want to know why you would say to them on the 14th you had all the time in the world? I now understand that. They felt it was serious. You cannot tell me that Attorney General Reno was ever advised of that?

Mr. JAMAR. I cannot tell you that, no. But, had there been serious preparation of the manuscripts, we would have waited. There was none.

Mr. SHADEGG. I think they would contend there was serious because one came out.

Thank you, very much, my time has expired.

Mrs. COLLINS of Illinois. Mr. Chairman.

Mr. MCCOLLUM. Yes, Mrs. Collins, you may ask in absence.

Mrs. COLLINS of Illinois. Mr. Chairman, I ask unanimous consent to have my opening statement made just prior to my questioning, please?

Mr. MCCOLLUM. Without objection.

Mrs. COLLINS of Illinois. Thank you.

Mr. MCCOLLUM. Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Let me get Mr. Jamar. I am a little confused right now. Do I understand that Mr. Koresh made an offer to come out in due course, voluntarily? As I understand from the questioning, that offer was made?

Mr. JAMAR. What happened he sent a letter out saying it was time to write the seals and he was ready to do that. It was open-ended as to when that might occur.

Mr. SCOTT. But that he might, sometime, come out voluntarily?

Mr. JAMAR. I think that was about the fourth time he had promised that, yes.

Mr. SCOTT. And did you have any reason not to believe that he would actually do that?

Mr. JAMAR. From his conduct from February 28 until April 19, I would have every reason to believe he would not do that, yes.

Mr. SCOTT. What do you mean? Could you elaborate on that?

Mr. JAMAR. He constantly would make promises he did not keep. I think the efforts of the negotiators to spend 7 weeks of discussion, I think an analysis of those tapes will indicate how manipulative and how devious he was in his ability to control events.

He would put us on one edge and jerk us down to the other constantly. That was his stock and trade.

Mr. SCOTT. Did you have any reason to believe that this last offer was any more credible than any of the others that he had made?

Mr. JAMAR. I remained as hopeful as I always was. I did not bite as hard as I did on March 2, but we listened, we pushed and pushed and pushed. What is the progress on the manuscripts? Tell us, tell us, tell us.

And all we got was stall.

Mr. SCOTT. Now, were you receiving any expert advice, any advice from experts on how to handle this situation?

Mr. JAMAR. Yes, sir.

Mr. SCOTT. How many different experts were giving you advice?

Mr. JAMAR. I would say, indirectly, dozens.

Mr. SCOTT. And could you explain the consensus of that advice?

Mr. JAMAR. Well, it would change as time passed.

Mr. SCOTT. Was there a consensus? Was everybody telling you pretty much the same thing?

Mr. JAMAR. At certain times there was a consensus and at other times, no.

Mr. SCOTT. What kind of different advice were you getting?

Mr. JAMAR. Well, a good example is, a good consensus would be let us do not do anything to provoke them from the start which we did not do. We were extremely careful, but for the beginning.

I would like to take the opportunity now to describe what we discovered there. When we arrived, when the FBI arrived Byron was the first and he started with the negotiations at 11 a.m. And we arrived in the evening of the Sunday—there were several of us—to examine what the situation was.

What we had was four ATF agents who had been killed. There had been hours of gun battle. And what we had was a site where they had a four-story view of a very wide area and they had people with automatic weapons. They had already demonstrated that they were fully prepared and capable of using them.

We tried to find out what it took to get control of the perimeter. We did not want to do anything to interfere with what was going on—the flow of children coming out that Jim Cavanaugh had established. So the HRT commander was en route. I went forward to try to find out what we had. And discovered that the perimeter was very loose and thank goodness for some local and State agencies which maintained, SWAT teams maintained, the perimeter. But we determined that we could not get within hundreds of yards of that place without being exposed to automatic gunfire and possibly .50 calibers.

So the decision was made that we must have some sort of protection for our agency. We were going to establish any type of perimeter. That perimeter was not established until after March 2. We were not in view. The only way that Koresh was aware of the FBI was through the negotiators. We were very careful.

But the danger level of that situation, if you look there is a photograph on the right, please, the easel on the right, if you would take that down. No, I am sorry, the one behind that one, that is the one I am after.

Thank you.

The lower road there across, that is "Double E" Ranch Road. Where Jim Cavanaugh was describing a while ago was that house right in the middle there. You go up the driveway and around, up

at the top you see that is where we call Sierra Two. That was a dairy barn.

We wanted to get people in there. And that is up, the upper level of that picture would be the Branch Davidian property. We did not go on that property until we had made the effort to go in the back on the evening of March 2.

But the danger level was so high. Their ability to see the entire area was so strong and their weapons were so powerful that we had to have armor to protect our agents. We could not have established a perimeter around there and controlled those circumstances without some armor.

Mr. SCOTT. Well, I guess the point we are trying to focus on is in the negotiation process—and that is what I think this inquiry is about today or at least the final—what basis you had to believe that Mr. Koresh would actually come out as he said he would?

Mr. Sage, were you involved in the negotiations?

Mr. SAGE. Yes, sir, I was.

Mr. SCOTT. Did you believe Mr. Koresh when he said this time that he would be coming out?

Mr. SAGE. This time being April 14,?

Mr. SCOTT. Right. Right before the——

Mr. SAGE. The only consistent aspect of Koresh's actions, as of the 14th of April, was the consistency of breaking every promise that he had made. That may be slightly overstated but only slightly.

So the short answer to that question is, no. I was hopeful but I was doubtful.

Mr. SCOTT. Thank you. In the selection of the CS gas a lot has been made about that. Were other gases considered and could you discuss briefly the merits of one or another of the gases?

Mr. SAGE. We relied on the expertise of our headquarters and the experts they consulted. I do not possess that expertise. I think that is going to be in this later panel discussed in very much detail. Mr. Scott, I do not think that I would be able, I cannot describe all the possible gases. I just do not know that.

Mr. SCOTT. Thank you.

Mr. MCCOLLUM. Thank you, Mr. Scott.

Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Chairman, I yield 5 minutes to the gentleman from Arizona.

Mr. SHADEGG. I thank my colleague and appreciate him doing so.

Mr. Cavanaugh, you said a minute ago, you would have given your life to save those children, is that right?

Mr. CAVANAUGH. I think Mr. Sage said that, sir.

Mr. SHADEGG. Mr. Sage, you said that. I take it, Mr. Cavanaugh, you share that sentiment though, do you not?

Mr. CAVANAUGH. Well, certainly, yes, of course.

Mr. SHADEGG. Indeed, there were a number of children in the compound and a number of women in the compound. And regardless of what you believed about Mr. Koresh, you had to take a different attitude toward those women and children, did you not, Mr. Cavanaugh?

Mr. CAVANAUGH. Yes, sir.

Mr. SHADEGG. Mr. Sage.

Mr. SAGE. The answer is, yes, but can I make a distinction?

Mr. SHADEGG. Sure.

Mr. SAGE. When I arrived there, as the first FBI negotiator at 11 o'clock, this was already in motion. The problem that the FBI was faced with was that prior to the 28th, we would have, at the most, ATF, FBI, would have been faced with the possibility of attempting to negotiate a group of individuals, willing participants, out to face the potential of maybe multiple 5-year sentences.

Mr. SHADEGG. Let me interrupt you right there. I need to just use my time as quickly as I can. The point is you had a——

Mr. SAGE. There is an important point, Congressman that I really need to make.

Mr. SHADEGG. OK, go ahead and make the important point, if you will.

Mr. SAGE. OK. When we rolled up, we were then faced with the possibility or the problem of attempting to negotiate a group of people out to face multiple first-degree murder charges in a State that may well lead the Nation in capital punishment—overwhelming difference, overwhelming problem.

The same priority focus, the safe resolution of the situation.

Mr. SHADEGG. Right. The children were never going to be charged with murder, were they?

Mr. SAGE. No, sir.

Mr. SHADEGG. OK. So, in many senses, they were victims of this circumstance, were they not?

Mr. SAGE. I think we all agreed on that, yes, sir.

Mr. SHADEGG. So if they were victims, they had to be considered in your negotiations differently than those that were responsible, Koresh, himself and those others who pulled the trigger?

Mr. SAGE. That is why they were the top priority to try to get out, yes, sir.

Mr. SHADEGG. So, in many senses, they were hostages, were they not?

Mr. SAGE. Well, they were hostages to their fate, yes, sir. They were—in fact, Koresh even referred to the children as hostages and the fact that they were more important because of their value as a hostage.

Mr. SHADEGG. Which drove your obligation to get them out safely, if you could?

Mr. SAGE. Without question.

Mr. SHADEGG. I want to go into the tension that it seems to me to have developed between the negotiators and the tactical people because some things occurred that I do not understand.

The report states, rather specifically, that the negotiators—and Mr. Sage, you were a negotiator and Mr. Smerick, you were an advisor on that, and I believe Mr. Noesner was a negotiator.

Mr. NOESNER. Yes, sir.

Mr. SHADEGG. It says that you remained hopeful, while you were doubtful at times, hopeful to the end of a peaceful resolution. Did you feel that, Mr. Smerick?

STATEMENT OF PETER SMERICK, FORMER CRIMINAL INVESTIGATIVE ANALYST, INVESTIGATIVE SUPPORT UNIT, NATIONAL CENTER FOR THE ANALYSIS OF VIOLENT CRIME, FBI ACADEMY, QUANTICO, VA

Mr. SMERICK. I agree with the premise that David Koresh was never coming out of that particular compound. As an analyst for the FBI, from the Investigative Support Unit, I believe the best that the negotiators were going to be able to attain in this situation was getting additional people out of that particular compound.

Mr. SHADEGG. And you had some success in getting people out. Mr. Cavanaugh, I believe you got 34 people out in 23 days, is that right?

Mr. CAVANAUGH. No, Congressman. I——

Mr. SHADEGG. Not you, personally, but the FBI?

Mr. CAVANAUGH. Right, that is right, yes, sir.

Mr. SHADEGG. The FBI got 34 people out in 23 days.

Mr. CAVANAUGH. I believe that is right.

Mr. SHADEGG. OK. So you would agree with the statement in the report that you remained hopeful to the end for a peaceful resolution of this?

STATEMENT OF GARY NOESNER, SUPERVISORY SPECIAL AGENT, FEDERAL BUREAU OF INVESTIGATION, QUANTICO, VA

Mr. NOESNER. Is that a question for me, Congressman?

Mr. SHADEGG. Yes.

Mr. NOESNER. Yes. We always try to work toward bringing about a peaceful resolution, even if we have come to a decision or a conclusion that the ending may not be to our liking but we continue to work and strive toward a peaceful resolution.

And it was 35 people that came out, sir.

Mr. SHADEGG. Thirty-five?

Mr. NOESNER. Thirty-five.

Mr. MCCOLLUM. Good, I wish it had been more.

Mr. NOESNER. So do we.

Mr. SHADEGG. Some of the things that happened trouble me. The report, itself, acknowledges that there was—it says, "The negotiators felt that the negotiating and tactical components of the FBI strategy were more often contradictory than complementary."

Tell me why the report says they were contradictory.

Mr. NOESNER. Well, I think in any dynamic situation the way our system is set up and the FBI and most police departments follow this. In our structure the negotiations components and the tactical components are separated and the purpose being that the on-scene commander has an independent assessment of the situation and independent recommendations.

One is not tainted by the other. So there is a dynamic process that takes place there. Yes, the negotiation strategy as I recommended when I got there, I thought we should take a low-keyed approach, stay back and appeal——

Mr. SHADEGG. Well, the President was told that and apparently believed it.

Mr. NOESNER. Is that a question for me? I——

Mr. SHADEGG. Let me put a question. Did you feel betrayed by some of the tactics that were ultimately used? For example, there

is a report, a direct quote from the transcript where it is said by a negotiator to Mr. Koresh, "We had a very good dialog last night, the electricity will not go off tonight because we have had a good dialog this evening."

That is a negotiator to Mr. Steve Schneider. A half an hour later, the lights are turned off and left off permanently, the electricity had been shut off.

Why?

Mr. NOESNER. I cannot answer the why. But I can tell you that the negotiation team was disappointed in that decision. What my job is, as negotiation coordinator during the time I was there from February 28 through March 25, was to provide my assessment and input to the onscene commander.

He has to take that information and couple that with the information he receives from other intelligence sources, from the tactical team and he has to weigh all those things, weigh them with his own experiences and his own perceptions and he has to come to a decision.

We have a saying that negotiators negotiate, commanders command. And even though I may not have agreed with some of those decisions I know that they were made by Mr. Jamar with the best of intentions to resolving this peacefully.

Mr. SHADEGG. Did you feel, well——

Mr. NOESNER. I did not feel betrayed. I was disappointed in the decision, betrayed is far too strong a word. OK.

Mr. SHADEGG. Mr. Sage, that was not the only incident of that type. There were a number of incidents where it seemed to me, from reading your report, like you were trying and Mr. Cavanaugh was trying to gain the trust of Mr. Koresh to be able to talk him into a reasonable resolution and yet, things happened that were inconsistent with that.

For example, the crushing of the cars or this whole issue of tension that arose between the negotiators and the tactical people over a machinegun that was sticking out a window, and negotiators say to Koresh, move it, that is threatening people and making things bad and the tactical people get angry with you about that.

Talk to me about the tension that existed. We are told that there were, at points, almost fist fights between the negotiators and the tactical people.

Mr. SAGE. No. That has been greatly overstated. There is normally going to be a dynamic as Mr. Noesner has pointed out. There are two options that need to be presented. If those options absolutely were mirror images of one another, we would be doing a disservice to the onscene commander as far as giving him or her a realistic assessment of the options available.

Was there tension between the negotiation effort and the tactical effort? Yes, there was. Did it affect, ultimately, the outcome of this incident? No, sir, it did not.

Mr. SHADEGG. Did there ever come a point in time, to your knowledge, when the President was told that the negotiating strategy—the wait and see, we have got all the time in the world—had been abandoned?

Mr. SAGE. Sir, I was so far down the chain of command that I do not know what the President was told or not.

Mr. SHADEGG. Mr. Jamar.

Mr. JAMAR. Well, that was never abandoned. I think that is the misunderstanding here.

Mr. SHADEGG. Well, it appears to have been abandoned on the morning of the 19th.

Mr. JAMAR. Well, when you say, abandoned, I think the action to go, when we did, was in agreement with everyone. There was not anyone who did not agree with that——

Mr. SHADEGG. My question was——

Mr. SAGE [continuing]. Including all of the negotiators.

Mr. SHADEGG. Thank you, very much.

Mr. MCCOLLUM. Ms. Slaughter, you are recognized for 5 minutes.

Ms. SLAUGHTER. Thank you, Mr. Chairman.

Gentlemen, I have been impressed with a lot of the witnesses in this hearing who seem to feel that they had a real understanding of David Koresh and that they were going to be able to talk him into doing something that he had spent a good part of his adult life saying that he was not going to do.

A man who was able to persuade intelligent people to do the things that he got them to do would not likely be swayed by two or three visits from a social worker or from defense lawyers.

But Mr. Jamar, I would like to know why you let those defense lawyers go in?

Mr. JAMAR. I was hopeful that they could appeal, that Mr. DeGuerin could appeal to Mr. Koresh's self-interest. Everything Mr. Koresh did was to his self-interest. So the idea was—I will give you the quick history.

I accepted one call from the lawyers the whole time I was there and that was from Dick DeGuerin.

Ms. SLAUGHTER. Did you make a comment though, just a minute ago, that somebody destroyed evidence?

Mr. JAMAR. Yes, ma'am.

Ms. SLAUGHTER. That having to do with those lawyers?

Mr. JAMAR. Yes, ma'am.

Ms. SLAUGHTER. Would you elaborate on that, please?

Mr. JAMAR. Yes, ma'am.

The decision to get Mr. DeGuerin in touch with Mr. Koresh was easy. To let him get on the telephone was easy. The hard part was letting him go in the crime scene. Let a defense attorney go into an——

Ms. SLAUGHTER. That is unusual, is it not?

Mr. JAMAR. It is extraordinary.

Ms. SLAUGHTER. I heard that.

Mr. JAMAR. And I was told that by everybody.

Ms. SLAUGHTER. Right.

Mr. JAMAR. Everybody opposed it. And I thought it was worth doing. It was extremely upsetting to the prosecutors, extremely upsetting to the Texas Rangers. Extremely upsetting to ATF. My fellow SAC's, with the exception of Bob Ricks, were extremely upset at me for doing that.

I think I heard yesterday some of the descriptions of they did the very things that the prosecutors and the investigators feared, it inhibited the investigation very much but I felt so strongly that if we

are ever going to reach Koresh the way to reach him is his self-interest, nothing else.

Ms. SLAUGHTER. Koresh really did not care if his followers died in a fire. He had explained to them, had he not, that this was the redemption? That this was the way to salvation, that they would all go in this fiery burst?

Mr. JAMAR. There is no question about that. Several of the survivors are concerned about their salvation right now.

Ms. SLAUGHTER. And there was also an indication that some members, particularly Mr. Schneider, believed that he could walk through that fire, that he would survive it.

Mr. JAMAR. I do not know if they bought all of that. I think that Steve Schneider was really wondering about what he was doing there at the end.

Ms. SLAUGHTER. I am curious too about the negotiations, because this is very important. You had professional negotiators with you?

Mr. JAMAR. The best in the world.

Ms. SLAUGHTER. All around?

Mr. JAMAR. The best in the world.

Ms. SLAUGHTER. Right, and yet, apparently ministers who called up and thought they could do it too, were they allowed to have a go at it?

Mr. JAMAR. We had a lot of them call and we had all sorts of people call. I think the philosophy in the process in making that decision would be better described by either Mr. Noesner or Mr. Sage. Why you do not let somebody buy into somebody else's mind——

Ms. SLAUGHTER. I find this very distressing because the one thing that you knew was that you were dealing with a man who had extraordinary ability to control people's minds.

Mr. JAMAR. He demonstrated that very effectively.

Ms. SLAUGHTER. Without question. Without question. As a matter of fact, I would not be surprised if some of the people who talked here and thought they had a great hold on him, if it was not maybe the other way around. And I have been somewhat disturbed about that.

Now, the letter that Mr. DeGuerin talked about yesterday, that was not in Mr. Koresh's handwriting. It looked like—I have no idea who wrote it, but my assumption, and I would have to have an expert tell me but it was very feminine handwriting.

Mr. JAMAR. It was probably Judy Schneider. I think she wrote the other letters he sent out.

Ms. SLAUGHTER. Do you have any evidence that she did that?

Mr. JAMAR. I would just infer it based on that I was told she wrote the more threatening letters that we had gotten in the previous days.

Ms. SLAUGHTER. And were there any indications over there that Judy Schneider was getting worried and that she was sort of free-agenting to try and help you people get them out?

Mr. JAMAR. We really hoped that. We really thought that she——

Ms. SLAUGHTER. Could she have written a letter, is what I am really saying, on her own? Could she have done that letter by herself?

Mr. JAMAR. No way that anything would leave that compound without Koresh's approval.

Ms. SLAUGHTER. You believe that it is his genuine signature on that letter?

Mr. JAMAR. I had not thought about it before, but I presume so, yes.

Ms. SLAUGHTER. I would really like to have somebody think about that a little bit. Because it did occur to me that perhaps she wanted out.

Another thing about this, there are a lot of questions, I guess, about the Attorney General, and whether she knew this. How many times, during this 51-day standoff, had he promised to come out if you would play a tape or you would sing a song or he could do something or other and you complied, but he never came out?

Mr. JAMAR. I think there are four very, very clear ones but I think I would think the game was constant.

Ms. SLAUGHTER. Right. Do you have any knowledge that each time you negotiated that it went all the way to the Attorney General of the United States?

Mr. JAMAR. She was kept briefed, I am certain, but I think there is a sameness to it all after a while.

Ms. SLAUGHTER. After you had gotten these other demands and you had complied with them, if you do this, I will do that, did you have any reason to believe that the letter that Mr. DeGuerin brought out was any different?

Mr. JAMAR. No, but I remained hopeful and I examined their conduct very closely thereafter and I saw nothing new that would make me change that.

Ms. SLAUGHTER. And you sent the letter up the chain of your command at the FBI?

Mr. JAMAR. I presume that they were informed of it.

Ms. SLAUGHTER. You do not know?

Mr. JAMAR. I doubt they sent the letter to Washington, itself, I doubt that, but I would presume that they were informed of the contents of that letter, yes.

Ms. SLAUGHTER. There is no evidence of any sort, that you know of, that the Attorney General had any reason to believe this last letter even existed?

Mr. JAMAR. That and there would not be any reason for her to change her opinion if she did.

Ms. SLAUGHTER. All right. That is very important.

Mr. Sage, you did quite a bit of negotiating and I think I have heard on CNN, some of the work that you have done. Do you have any feeling that Mr. Koresh was going to change his mind, surrender, send everybody out or come out peacefully?

Mr. SAGE. We remained hopeful up until the very end of this thing, the tragic end of this thing.

Ms. SLAUGHTER. When you talked to him, did he give you indications that he was considering doing that?

Mr. SAGE. Oh, he gave us every indication in the world regarding a number of topics including the safe and orderly exit. I mean to a point of minutiae when we prepared the original exit plan on March 2.

Ms. SLAUGHTER. Was not there one point where everybody was lined up to leave and he had lied about leaving? Is that correct? Can you elaborate on that a bit?

Mr. SAGE. We were led to believe, on March 2, that he literally had—in fact, there was a very clear—this person was every bit, well, maybe I will not say every bit as skilled at using the same techniques that we tried to use on him.

Ms. SLAUGHTER. I think you could say it.

Mr. SAGE. But we had, at one point in time, a very vivid picture painted for all of us. And I will say, matter of factly, that I bit off on this hook, line and sinker, probably in very close similarity to the defense counsel, addressing or adopting the representations made to them subsequently in the siege. But I am referring to the activities of March 2.

We had a very vivid picture of the children lined up with their little coats on and it was very cold outside and rainy. Everybody very concerned about that. The very smallest aspect of that I can recall vividly, working very closely with Jim Cavanaugh on this, up to and including concerns about well some of the kids wanted to bring their puppies out with them.

And we were ready, from February 28 when I got there until the ultimate conclusion on April 19, to accommodate any reasonable request. He would get us in a position where we thought there was a major break at hand and then pull the rug out from under us. But that is our job. Not to lose faith, to continue to try to reach a safe and reasonable conclusion and we never ceased in that effort.

Ms. SLAUGHTER. He was not only playing with you, he was playing with his followers?

Mr. SAGE. Absolutely.

Mr. MCCOLLUM. Ms. Slaughter, your time has expired.

Ms. Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman.

And thank all the witnesses for being here today. I would like to follow up to Mr. Shadegg's line of questioning. As all of us know from reading the report, according to the Department of Justice report on the events at Waco and I quote, "The guiding principle in negotiation and tactical employment is to minimize the risk to all persons involved—hostages, bystanders, subjects, and law enforcement officers."

Yet, despite this clear objective, the DOJ report states that the components, the tactical and the negotiating components of the FBI strategies were "More often contradictory than complementary."

I would like to ask Mr. Cavanaugh and any others who would like to comment, what accounts for the lack of a coherent game plan for ending the siege in accordance with the stated principles about minimizing the risks?

Mr. CAVANAUGH. Congresswoman, I think that in a negotiation what you want is these two contradicting voices if you are the commander. You want a negotiator coming to you and saying, I can talk these people out and you want a tactical commander coming to you telling you that I can resolve any other issue that might be tactical.

That is the way that it is appropriately handled. The voice of the negotiator has to be equal to the voice of the tactical leader. And my recommendations to the Justice review—and I do not know if——

Ms. ROS-LEHTINEN. So you are saying this is what you wanted to happen? You wanted to have this contradictory—that is supposed to happen that way?

Mr. CAVANAUGH. That is supposed to happen. And I told the Justice review, and I am not sure the FBI will necessarily agree with my assessment of the FBI, but I made it, certainly, with all good intentions and that would be that their negotiator, their chief negotiator would be the same pay grade and rank as the chief of their Hostage Rescue Team. So that they would come at the SAC, Mr. Jamar, with an equal voice. And I am sure Mr. Jamar gave them an equal voice and he was very, very understanding and fair.

But what I am saying is——

Ms. ROS-LEHTINEN. I think that perhaps there might be a difference between playing the good cop/bad cop routine and having a situation where you are giving contradictory tactics and you end up with a system that is all fouled up.

So I think that you might be saying that that is a good maneuver to try but when you get into a real life situation, and when you are negotiating that way and the other folks say do it the other way, I think we can see what can happen. I think that is a little different than playing off each other and bouncing those kinds of ideas.

Mr. NOESNER. Could I comment on that?

Ms. ROS-LEHTINEN. Yes, sir.

Mr. NOESNER. Mr. Cavanaugh, I would just disagree with one point he made. The system is not built that the two components be in controversy all the time. The system is built so that each of the components has an independent to the onscene commander. For example, in the Taladega Prison riot both the negotiation component and the tactical component there were in complete agreement, that the most risk-effective method to resolve the situation would be the utilization of tactical resources and that was a very successful operation.

There is oftentimes, where both components are in agreement, they are not necessarily in conflict, we were not purposefully trying to be in conflict. At Waco there was a fundamental strategy disagreement and what was the best way to proceed? In Waco the negotiation team wanted to have a lower-keyed approach and the tactical team's approach was more to apply pressure.

Part of that, I believe, was driven by the fact that the tactical team, as Mr. Jamar, indicated was exposed to open fire. We were dealing with the most complex situation we have ever had in the United States, where there had already been a demonstrated willingness to use force, and we had, in fact, four dead Federal agents, an unknown number of dead people inside, certainly .50-caliber weapons that could reach for over a mile and affect our tactical personnel.

So the need to provide them with adequate cover to contain the situation had an impact on conveying perhaps the message that Mr. Koresh did not want to hear. So I think that is important to make note of.

Mr. JAMAR. May I add to that, ma'am?

Ms. ROS-LEHTINEN. Yes, just a short statement. I would like to move on to another part.

Mr. JAMAR. I think that there should be no misunderstanding that the last thing that tactical people want to do was to approach the compound. They do not want to do a tactical action at all. You do not do that except as a last resort. I think where that report is, is where there were instances where they were in conflict but it was not that much. It just did not happen that often.

Ms. ROS-LEHTINEN. The DOJ report further states that this standoff left the Davidians with a sense of hopelessness and isolation and it further states and I will quote, "The problem was the pace of the surrender."

Was there an explicit or an implied directive from higher ups to get this thing over with? I would like to ask Mr. Sage to comment on that and any others who would like as well.

Mr. SAGE. I was there the entire 51 days, as I have mentioned. I can say that, matter of factly, I never felt pressure from anyone that there was a specific time frame, timetable where we needed to have this resolved by date certain.

Every effort was undertaken to try to identify and fully explore every option available to us, obviously pursuing those that were considered the most potentially fruitful and we did that. We had constant input to the onscene commander and his assistants. We had one of the SAC's, Bob Ricks, was very closely involved with the negotiation cell throughout most of it. There was not a breakdown in relaying back and forth the dynamics of negotiation, the identified potential avenues that we intended to pursue and the efforts gained from those.

Ms. ROS-LEHTINEN. And speaking of those avenues that you might have pursued, according to the DOJ report it says, "Some of the negotiating personnel did believe that more Branch Davidians might have departed the compound had the pressure tactics been withheld."

And these tactics, as we have read, included the playing of chants, which it said Mr. Sage objected to, to deprive the Davidians of sleep. Who made the decision to overrule these negotiators about these pressure tactics?

Mr. Smerick, or anyone else who wishes to answer.

Mr. JAMAR. I think I would be the one to answer that since I was the one who did that. The decision to start playing the loud noises and that sort of thing was made March 22. That is when that started. That tactic had been recommended to us by the behavioral scientists from the start. And I did not like it. And my memory was of Noriega, you remember that in Panama and all of that, and I did not like that. But finally we got to the point where not much of what we were doing, you know, from mid-March on, was not being very effective.

So we, in discussions, what more can we do and the thought was that let us see if we can keep them awake and maybe that will help. Again, that was recommended from the start.

The negotiators felt like that would not work and would not be helpful. Did it affect how many more people came out? I do not think it did. We started on March 22, and Livingston Fagan came out March 23, but that was purely coincidental. I do not think it made any difference at all.

Mr. SAGE. Can I add to that just a moment? We had set up, intentionally set up a bank of loudspeakers and intentionally set them up in the form of high-fidelity speakers so there would be inflection to the voice.

And the main reason for that was not to play "Achy-Breaky Heart" or "These Boots Are Made for Walking" or any of the rest of the misrepresentations that are out before the American public.

The sole purpose of the PA system, initially, was to make announcements of which I was designated to make the majority of them. But more importantly, it was to play actual tape recordings from released Branch Davidians back in.

For example, on, I believe it was, March 12, Kathy Schroeder came out. Kathy Schroeder had a position of leadership in the eyes of her peers. When she came out it was much more effective to put an audio tape of Kathy Schroeder calling back into the compound saying, Hey, I have been released. I have been treated well. I have been reunited with my little 3-year-old boy, Brian. I have access to an attorney. I have access to the media and so forth.

We played, beginning approximately the 12th or 13th a series of tapes, four tapes in particular, and then a fifth one was added that was Kathy Schroeder making just exactly those representations voluntarily in her own voice, instead of them hearing it from me or another negotiator.

And Oliver Guy Orfus, the same thing, saying, hey, here I am. Everything is fine. They have treated me well. They are not the animals that we have been led to believe, and I have got an interview tomorrow morning on "Good Morning America."

Two tapes from Jack Orwell, who was the, and is the sheriff of McLennan County there which Mount Carmel is included in and the fifth tape was a conversation had between myself and David Koresh on March 17 after he refused to allow a second face-to-face.

The reason for playing those was to give all of the people inside, and I stress this, all of the people inside an equal opportunity to understand exactly the dynamics that had been going on trying to resolve this, instead of just a core group that we may have been talking to or Koresh may have limited full communications to.

That was the intention of the PA system, not all the rest of the stuff that seems to have taken a higher focus in this matter.

Ms. ROS-LEHTINEN. Thank you, gentlemen.

Mr. MCCOLLUM. Ms. Ros-Lehtinen, your time has expired.

We are at a point now where, at any moment, the House will convene in special joint session to receive the President of Korea.

We are going to have to, under the House Rules, take a recess until that joint session is concluded. We intend to return to this panel—and I understand the difficulties of this break, you are just going to have an early and long lunch hour I think—we intend to return to this panel within 30 minutes after the time that joint session is concluded, or 1 p.m., whichever is earlier.

With that in mind, the joint subcommittees are in recess.

[Recess.]

[AFTERNOON SESSION]

Mr. MCCOLLUM. These joint committees on Waco will come to order.

We are a little bit later than I hoped we would be coming back from the break, after the joint session of Congress, but nonetheless we are here and gathered now. I do not believe there is a member of the minority side ready to ask questions at this juncture, I have been advised, and so I am going to yield the first 5 minutes to Mr. Blute.

Mr. Blute, you may proceed.

Mr. BLUTE. Thank you, Mr. Chairman.

I want to thank the witnesses for their testimony today. I would like to direct a question to Mr. Jamar, if I could. Did you regularly get a memorandum from Mr. Smerick concerning what was happening at Waco?

Mr. JAMAR. The first week I think Mr. Smerick probably gave me four memos.

Mr. BLUTE. Did you find those memos helpful in the development of your strategy?

Mr. JAMAR. Yes.

Mr. BLUTE. And in his March 7 memo to you, Mr. Smerick recommended that you bring in the local sheriff to become more involved in the negotiations. Did you act on those recommendations?

Mr. JAMAR. Well, he was already involved before that.

Mr. BLUTE. Was he involved extensively, would you say?

Mr. JAMAR. Well, he stayed with us all day every day, I think from the duration of the siege.

Mr. BLUTE. Was his input helpful to you?

Mr. BLUTE. We heard testimony earlier from an earlier panel, from a Branch Davidian who had escaped who had firsthand knowledge there who seemed to indicate that the relationship between the sheriff and Koresh was fairly cordial. Was that your understanding?

Mr. JAMAR. Yes. The sheriff was the type of man who had been sheriff for over 25 years, a very engaging man, extremely bright man. He knows how to communicate with people in that community and he was extremely effective with Koresh.

Mr. BLUTE. Was there any idea of using him upfront with Koresh?

Mr. JAMAR. We did. I think there was one instance where we put milk in where we made it look like it was the sheriff who had accomplished it, in order to build him up.

You might want to ask Mr. Sage—there is a photograph up there, the face-to-face—is a good example of the sheriff's commitment and his involvement with us.

Mr. BLUTE. In Mr. Smerick's March 8 memorandum he recommended that the resort to tactical pressure, "Should be the absolute last option we should consider, and that the FBI might unintentionally make Koresh's vision of a fiery end come true."

Seemingly, you did not listen to that recommendation.

Mr. JAMAR. Well, I do not think that—how do you want to define it and when? One of the points I tried to make earlier is establishing a perimeter and using armor to do that, is that tactical pressure? If we did not do that, we would not have stayed, we would be gone, we would have to leave. Remember when we arrived there were four dead ATF agents, at least 16 wounded, and at least five people we knew about dead inside.

You do not show up and try to establish control of something and put people in peril, although they were in very much peril the whole time. So that part, if you defined tactical pressure as that, then no.

As far as doing something to provoke them or anything like that, the first thing we did, I think would be close to provocative, was on the 15th of March where we moved some debris from the, what we call, the black side, the back. As you recall from television, the view you saw from the back, because there were some building materials and stuff that they would go out and continue to fortify and then kept leaving. So we wanted to remove that from them.

Mr. BLUTE. Let me just ask Mr. Smerick, if he would consider operating Bradley fighting vehicles close to the compound as a provocative act?

Mr. SMERICK. It would not necessarily be construed as a provocative act. What it would do is be perceived, perhaps, in the compound as additional stress being placed upon them. And so what I was concerned with, of course, was that if our goal is to try to break the control that David Koresh had over the minds of his people, what I would like to do is withdraw back slightly so that we are not increasing the pressure within the compound and strengthening the hold that Mr. Koresh had on his followers. But it was not a tactical move to provoke any type of a fight.

Mr. BLUTE. What about the issue of your decision, Mr. Jamar, to cut off the power inside the compound? Did you believe that the HRT agents in the field were cold and wet and this is somehow why the Davidians should be the same at that time? Is that part of your decisionmaking?

Mr. JAMAR. That was part of it. But I think the thing to remember, we cut the electricity off on the 9th, and we cut the electricity off on the 10th. The idea was here is something we can do to maybe to get a reaction from them which we did. Koresh never permitted classical quid pro quo on negotiations. He would not involve himself in it and did not permit it.

But that was what was going on. We would turn it back on. Well, that evening morale and cold was factor, but remember the reason we did it in the first place was also to use up their fuel. If they had generators, the sooner we used their fuel up, the generators will stop and they cannot use the fuel for molotov cocktails. There is a lot of reasons for doing something. But that night, I am the first to tell you, that the reason I did it that night primarily was for morale in one respect. Not just for tactical people, everybody who was out and cold and away from home and everybody else but also that we are not as predictable as they may think.

Now, did the negotiators like that? Not at all. Because it was a departure for them, but it got us out of a box.

Mr. BLUTE. Well, what about the further decision to play loud music, and the Tibetan chants and the rabbits being slaughtered? Was this an escalation and was this consistent with the advice that Mr. Smerick had given you?

Mr. JAMAR. Well, I think Mr. Smerick was gone when we did that. We did not do that until March 22. Mr. Smerick had the memorandum, one memorandum of his where that was an option to consider. He did not specifically recommend that, necessarily.

But it was done at that time. I would not consider it relevant to any of his memorandum.

Mr. BLUTE. Well, let me just say that it seems that there was a two-pronged approach here where you were raising the temperature while your negotiators were trying to lower the temperature. Let me ask Mr. Sage his opinion, while these things were going on, did you think that these were helpful things in your negotiations or hurtful?

Mr. SAGE. They presented difficulties, for sure, but that is not unusual. These are not matters that we were not prepared to attempt to negotiate through. It is not uncommon to, as part of the negotiation process, to actually try to ingratiate yourself a little bit more with Koresh and his followers by saying, look, this is out of our hands, but that is why you need to give us something to work with. I need to be able to do in to the onscene commander and demonstrate some good-faith progress here.

That held true throughout this. It was not an overwhelming stumbling block and it was not something that was undertaken without us having prior knowledge of it.

Mr. BLUTE. Let me just quickly ask one more question. Did you negotiate with each other or discuss your negotiations on a daily basis?

Mr. JAMAR. Constantly, all day.

Mr. BLUTE. Constantly, all day?

Mr. JAMAR. All shifts, yes.

Mr. BLUTE. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you, very much.

Mr. Schiff, you are recognized for 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. Cavanaugh, you are with the Bureau of Alcohol, Tobacco and Firearms, or you were at that time?

Mr. CAVANAUGH. Yes, sir.

Mr. SCHIFF. After the initial raid, which you have already described, did you become the initial negotiator with David Koresh and the Branch Davidians?

Mr. CAVANAUGH. Yes, Congressman, I did.

Mr. SCHIFF. And for how long did that last?

Mr. CAVANAUGH. On February 28, I was the negotiator from 10 a.m. until I got the cease-fire and the wounded out at 1 o'clock. At 1 o'clock I told David Koresh and Steve Schneider, I said, you are completely surrounded. This was not true, but I was stretching that a little bit.

And I was stretching it a lot, really.

Mr. SCHIFF. But just because time is short, if I can redirect you to the question.

Mr. CAVANAUGH. I am sorry.

Mr. SCHIFF. For how long were you the chief negotiator, essentially the chief negotiator in this thing?

Mr. CAVANAUGH. I was the primary negotiator up through Wednesday or Thursday.

Mr. SCHIFF. All right, and who replaced you as negotiator?

Mr. CAVANAUGH. At night, the first person was Gary Noesner, at the table here. He replaced me at Sunday night at 2:30 or Monday morning at 2:30 a.m.

Mr. SCHIFF. Now, Mr. Noesner is with the FBI, is that right?

Mr. CAVANAUGH. Yes, sir.

Mr. SCHIFF. So that is at the point, several days later when the FBI then took over the negotiations with David Koresh?

Mr. CAVANAUGH. Yes, sir. They officially really took over, I would say, Monday the next day directing operations, taking over the negotiations. Mr. Hartnett had come to me and told me that the White House had directed that the FBI would take over the whole situation.

Mr. SCHIFF. When the White House directed that the FBI take over from ATF, did you continue to participate in the negotiations even though the FBI was now in charge of it?

Mr. CAVANAUGH. Yes, Congressman, I did.

Mr. SCHIFF. You continued to participate all the way through?

Mr. CAVANAUGH. Well, I stayed on the phone for up to Thursday, and I stayed on the negotiating team up until Saturday. I had been transferred to Washington once again, I had to move my personal goods. I was not on the phone speaking at that time. And so I left. I came back for another stint of about 7 to 10 days in late March or early April.

Mr. SCHIFF. So you were always a participant in the negotiations?

Mr. CAVANAUGH. No, sir. A week and then a break of a couple of 3 weeks and then a week. I was not there for the last 2 or 3 weeks.

Mr. SCHIFF. Were you ever removed as a negotiator? Did the FBI ever tell ATF we do not want you involved any more?

Mr. CAVANAUGH. No, sir.

Mr. SCHIFF. OK. They were always fully involved?

Mr. CAVANAUGH. Yes, sir.

Mr. SCHIFF. Did you believe that, were you aware that there were surrender plans being discussed with Koresh and the other people inside the compound by the lawyers, as testified hereto yesterday?

Mr. CAVANAUGH. Yes, sir, I did. I was aware.

Mr. SCHIFF. You knew about that?

Mr. CAVANAUGH. Yes, sir.

Mr. SCHIFF. In your opinion, were those serious plans for surrender?

Mr. CAVANAUGH. Well, Mr. Schiff, like I testified earlier, I felt the best chance we had to get them out was on March 2. I agree with Mr. Jamar, he tricked us, he fooled us, he played with us.

I thought if he was coming out that was the best time we were going to get him out. Fatigue, he was wounded, his blood pressure was down. I think he was playing more sick than he really was, but I thought that we might have a chance at that point of getting him out.

I told Mr. Jamar not to let those attorneys in there. I disagreed with that strongly.

Mr. SCHIFF. Let me turn now to Mr. Jamar, if I may.

Mr. Jamar, you were aware of the surrender discussions between Koresh and the lawyers?

Mr. JAMAR. Well, the surrender discussion was, as I described earlier, that was the weekend there of late March or early April,

not the 14th. We are talking about two very distinct periods of time here.

Mr. SCHIFF. Well, specifically in April, around April 14, the lawyers testified that they had reached an agreement for a surrender, were you aware of that?

Mr. JAMAR. Well, no. I think that was the implication of what they were saying but that was not exactly it. What it was, was he was going to come out after he writes the manuscripts. An open-ended time which they believed, if he was telling them the truth, would take a couple of days each. So they thought 10 or 12 days he would be coming out.

Mr. SCHIFF. And did you convey to Mr. Sage, as chief negotiator or was Mr. Sage already aware, if you know, that there was at least a discussion of a surrender in 10 to 12 days as an estimate?

Mr. JAMAR. Well, I do not think you are saying it quite right. I think the——

Mr. SCHIFF. I will let you say it then the way it ought to be said.

Mr. JAMAR. All right. That all the surrender discussion, all the surrender plan discussion was done long before April 13 and 14 with them. It was when the lawyers were inside. And they came out and then they were on a high. He took it right away from them and then they left. We thanked them for a wonderful effort, taking their time and that was it.

Then Mr. DeGuerin came up with the idea of discussing with some scholars and theologians, some religious scholars that let us try this new angle with the seals with him. Well, he gets on the phone with Koresh and presents that to him and Koresh goes for it and sends a letter out.

Mr. SCHIFF. Excuse my interruption, it is only because time is short.

Mr. JAMAR. I understand.

Mr. SCHIFF. Was there ever a point when you felt that there was a serious surrender discussion or offer being made? Did you ever——

Mr. JAMAR. Are you talking about in April, with the lawyers?

Mr. SCHIFF. That is what I am talking about.

Mr. JAMAR. No. It was serious on their mind. I think they were earnest and really hopeful but in Koresh's mind, never a chance I am sorry.

Mr. SCHIFF. All right, Mr. Chairman, I see my time is about up. I just want to say that once again we have heard some very powerful testimony at this hearing about the initial events and the shoot-out between the Bureau of Alcohol, Tobacco and Firearms members and the people inside the compound.

I just want to again say that on my part and I think everybody else's here in both parties in the subcommittees that all of us support law enforcement and all of us want to see that if there are and there will be dangerous situations in the future that Federal agents are not sent forward in inherently dangerous situations without proper planning and management and backup.

Thank you, Mr. Chairman. I yield back.

Mr. MCCOLLUM. Thank you, Mr. Schiff.

At this point, I will recognize Ms. Lofgren for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman.

I would like to first apologize for not being here this morning, the Science Committee had a hearing at the exact same time on the Internet which is of huge importance to my district and I would say the future of the country.

I have read through the various FBI reports and the like and I was interested in the report on July 13, Mr. Jamar, I assume it is accurate, where you indicate that, I guess it is page 2, that there had to be some method devised to remove individuals from the compound if, for example, it became apparent that children were being brutalized or had their lives endangered.

I was wondering how much you knew or believed at that time, before the April 19 event, as to the abuse of the children, the child molestations ongoing, and how much that was a factor, even thought it might not have been your direct jurisdiction, in factoring how to deal with this whole situation?

Mr. JAMAR. Well, I think as Mr. Sage and Mr. Cavanaugh indicated, the children were utmost in everyone's mind all the time. The information received when we arrived was that there were several instances of complaints, by Koresh, of severely disciplining infants to include paddling them to where they bled and the other would be taking 10- and 12-year-old girls for his wife.

In fact, in one of the tapes he sent out he had a group of his wives or potential wives sitting on the couch with their Star of David necklaces on. And what we took from the advice from behaviorists and others is that because he had that kind of conduct in the past, there is no reason for him to discontinue it during the siege.

And there was some evidence, we thought, of him being involved with a child while we could hear over the microphone, we had been told that that was not the case, it was the preaching. But Kathy Schroeder tells us—Kathy Schroeder is one of the people that came out and was a witness in the trial—Kathy Schroeder tells us as she stuck her head in the door to say goodbye to Koresh when he forced her to come out of the compound, because she did not want to come, he was in bed with a child, with a 10- or 12-year-old little girl.

So we did not know that then is my point, we know it now.

Ms. LOFGREN. I am wondering what you knew at that time.

Mr. JAMAR. What that does to me is that it confirms the belief that if he had that kind of conduct in the past, it would continue during the siege, and it did, apparently.

Ms. LOFGREN. What I am trying to probe—I will tell you trying to think back to just what my neighbors—I am a fresh person. I have only been in the Congress now for 7 months, I guess, and like a lot of other Americans in 1993, my neighbors were opining on what should happen.

And one of the questions I recall people in the neighborhood and in the town I lived in asking was why not just wall them up and leave them alone? And how much was it costing a day for the taxpayers to keep this siege ongoing?

I would like to know how much was it costing per day and were there good reasons for not simply withdrawing and letting them sit there for a year or more?

Mr. JAMAR. Well, there is lots of reasons not to withdraw. Here we got four dead ATF agents and people who are armed. The other is that if we leave those people in, particularly the children, to him to do what he pleases with the conditions in there—forget the danger level, forget the possibility of gunfire inside there—it is the sanitary conditions, because the place was not made for normal living.

Ms. LOFGREN. So that was a factor in terms of not just going——

Mr. JAMAR. I just do not think that was feasible.

Ms. LOFGREN. Let me ask you this, you have mentioned that you had a lot of input from experts in behavioral sciences and I was wondering, you had conflicting information and we had a gentleman testify yesterday about the need to understand the Biblical context in which they were operating, which I agree with. He analogized it to if it were somebody who spoke a different language you would have somebody who could negotiate with them in their language and I think that is sensible.

But I am wondering how did you assimilate the various diverse pieces of information you were getting to make the soundest judgment you could as to strategy?

Mr. JAMAR. Well, your observation about being able to relate and stuff like that, maybe you do not always want to do that. I may ask Mr. Noesner to give you the philosophy of negotiation when you have someone who has a deep belief system, you might ask him to describe that to you.

But each component, each shift of the negotiators would report interesting or significant events.

Ms. LOFGREN. No, but the—we have a very short time and I do not want to be rude, but I am not suggesting that we necessarily should negotiate with someone who is psychotic on their terms, but to the extent possible, we should try and understand what that person thinks is going on, is that not correct?

Mr. NOESNER. I think one of the great misunderstandings of this is that there is implications that the FBI totally discounted Mr. Koresh's religious perspectives. I think nothing could be further from the truth. If you listen to the hours upon hours of tape, we listened to David Koresh's theology and his points of view. We never tried to tell him that we understood that to the level that he did. But there are two consistent themes that you will hear from every mental health expert that knows anything about crisis intervention, crisis negotiation, and that is that you neither embrace someone's belief system nor do you discount it.

Ms. LOFGREN. No. See, I guess I am not making myself clear. I am not suggesting, because I am not a negotiator, how the negotiations should have been conveyed. I am more interested in the internal process of how the negotiating experts came to understand the behavior and the likely future behavior of this individual who some believe was, and I personally am not of that position, but appears to have been psychotic in addition to being engaged in a rather strange religious cult. And how you assimilated this information so that you could make the best tactical decisions based on your understanding of his outlook on life?

Mr. NOESNER. What I think I was trying to get to is we learned from listening to David Koresh for many hours to try to understand

the individual we were dealing with. And we did not believe that he was psychotic or out of touch with reality. He manifested primarily those attributes of an antisocial personality. That is a con man, an egotistical self-centered individual who manipulated people and events for his own personal gain and who callously disregarded his naive and gullible followers.

That is how we read David Koresh. Now, we did not confront him with that. But we tried to employ techniques that would help us better understand him and to provide him with the alternatives that he felt would be in his best interest. And we gave him numerous options throughout the negotiation process to take advantage of all sorts of opportunities. Whatever concerns he had, we met. They were concerned about being able to return to the compound because the inhabitants had given up their worldly goods. We went out over the press conference, we went in on paper saying that the compound would not be confiscated.

And he was concerned about being able to continue his ministry in prison. We provided documentation from the U.S. States attorney's office, from the sheriff and from the SAC saying, you will be allowed to meet with your followers in prison. We sent them in videotapes of the children who had been released. We made, we transmitted messages to and from relatives.

Whatever the needs or desires that they had, we undertook extraordinary methods to try to comply with those so that David Koresh would understand that he would be treated fairly, with dignity, and have his opportunity to speak his peace and to present his perspective on events in the public forum, as well as in a court of law. And, yet, despite those efforts, he choose not to do it out of his own self interest. I think that is the important point.

Ms. LOFGREN. I know my time is up, but very quickly, I did ask how much per day this siege was costing and I wonder if you could tell me?

Mr. MCCOLLUM. You did ask that and if anybody could answer that, you may do so. How much per day did the siege cost?

Mr. JAMAR. I am sorry, Mr. Chairman, I do not know.

Mr. MCCOLLUM. All right, well, we probably could get that somewhere else, Ms. Lofgren.

Thank you, very much.

Mr. Chabot, you are recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

Mr. Jamar, following up with Mr. Schiff's line of questioning, did you tell Mr. Sage about the DeGuerin/Arnold agreement, so to speak, with Koresh. Did you pass that on to him?

Mr. JAMAR. He was with us. When we were, all the time that we spent with Mr. DeGuerin, in transporting him back and forth, Byron was there. Also when we had him on the phone, Byron was there. He learned——

Mr. CHABOT. But, Mr. Sage was there so——

Mr. JAMAR. So he learned of it the same day, yes.

Mr. CHABOT. Mr. Sage, did you pass that information on to anyone?

Mr. SAGE. Absolutely. At the end of each shift we would have a summary of the events that we referred to as significant events which would be documented for briefing the next shift that came

on. I did not wait that long. As soon as we came back from that meeting, because of the potential value of this situation, we discussed it thoroughly amongst the negotiation team, the team leaders, the team coordinator, who at that time had shifted from Mr. Noesner to Clint van Zandt.

Mr. CHABOT. So everyone knew basically that this agreement, or whatever you want to call it, between Koresh and yourselves had been made?

Mr. SAGE. The concept was thoroughly discussed. What needs to be kept in context is that this really was not a major departure. In fact, we had—the concept, as I recall, was addressed, at least the very early stages of it, as I was transporting Mr. DeGuerin and Mr. Zimmermann to a meeting. And we tried to press them for—I tried to press them—for a basic time frame.

And it was at that time when I mentioned that they were talking about, and I recall 2 to 3 days per seal. Well, at that rate, 2 to 3 days would be 14 to 21 days at the outside. So we embraced that aspect of it as well in the negotiations to try to keep an update as to progress.

Mr. CHABOT. OK. Thank you.

Mr. Smerick, let me ask you a couple of questions.

The FBI turned to you for professional psychological and strategic advice during the course of the siege, is that correct?

Mr. SMERICK. That is correct, sir.

Mr. CHABOT. OK.

And you provided the FBI with guidance through a series of reports or memorandums?

Mr. SMERICK. Yes, sir, during the first week of my stay in Waco, TX.

Mr. CHABOT. OK. And in the memorandums, you stress the need to try to ensure the safety of children, correct?

Mr. SMERICK. Yes, sir.

Mr. CHABOT. And as I understand it, in your first series of memorandums, I believe the first four, you essentially suggested a waiting strategy. You urged the FBI, in fact, to back away from the house, is that right?

Mr. SMERICK. That is correct.

Mr. CHABOT. So the strategy that you were emphasizing was "wait," at that point?

Mr. SMERICK. Wait and be patient.

Mr. CHABOT. OK. Wait and be patient. Now, you believed, and here I think I am quoting you that, "Increased pressure on Koresh could eventually be counterproductive and could result in loss of life." Is that correct?

Mr. SMERICK. Yes, sir.

Mr. CHABOT. And you believed that, I assume?

Mr. SMERICK. Yes.

Mr. CHABOT. However, in the last memo, you suddenly recommended new measures, including cutting off negotiations and that seemed to be a fairly dramatic change in the tone of the memorandums at that time, is that correct?

Mr. SMERICK. Yes, sir.

Mr. CHABOT. I would like to quote to you something from the Washington Times. This says, "The memos urged"—referring to

your memos—"urged the FBI supervisors to wait Koresh out, saying, increased pressure could eventually be counterproductive and could result in loss of life," which we have just discussed.

Then it goes on to say, "Mr. Smerick, now retired, said FBI officials pressured him to change his advice on how to resolve the situation and in a fifth memo he made changes that amounted to an endorsement of the FBI raid."

Could you explain that?

Did you feel pressure from the FBI?

Mr. SMERICK. Not overt pressure. It was more of a self-imposed pressure. I had received information from FBI headquarters that FBI officials were not happy with the tone of my memos. From the standpoint that they felt it was tying their hands, meaning they were not going to be able to increase any type of pressure within that compound and instead were going to have to rely on strictly negotiations.

No one at FBI headquarters, at any time, told me or directed me that, hey, write different memos. But the analogy I like to give is one of perhaps a youngster who has been admonished by a parent or just a finger waved at him. We all have a tendency of wanting to please our supervisors. And I believe what I did subconsciously is tone down my memo, in memo No. 5, to more or less fall in line with what they would want to hear.

So it was not any pressure from the FBI, but it was pressure from myself to become more of a team player.

Mr. CHABOT. To become more of a team player?

Mr. SMERICK. Right.

Mr. CHABOT. OK. Was there anyone, in particular, who was not pleased with the tone of the memorandums?

Mr. SMERICK. No name was mentioned to me other than the Director of the FBI was not happy but it was made in passing.

Mr. CHABOT. Who told you that?

Mr. SMERICK. John Douglas, who was my unit chief, down at Quantico.

Mr. CHABOT. Thank you.

Mr. SMERICK. While that may appear in memo number five to be a dramatic change in philosophy on my part, you might also notice in the earlier memos which I had prepared, meaning the one on March 7, that I had made similar recommendations at that particular time for consideration.

So, in reality, what I said in the very last memo was not in reality a dramatic departure from what I had said earlier. The bottom line is for 51 days the FBI did not ignore my memos and, in fact, followed many of the suggestions and recommendations which I had provided.

Mr. CHABOT. But you clearly felt, particularly early on, that it was important particularly for the safety of the children that the strategy should be wait, and not move?

Mr. SMERICK. Oh, absolutely. And the FBI, in fact, did not move at that particular time and for the longest period of time went over and beyond normal negotiators might consider doing in a situation like this. In my experience in the past of working with negotiators in similar crises, for instance, the idea of bringing in attorneys to deal with the offender is unheard of; the idea of bringing in reli-

gious experts to discuss the matter with the offender is unheard of, and yet, the FBI considered all of these particular options.

And so the newspaper article you are referring to is not exactly accurate in its portrayal of my sentiments. The FBI did not ignore my memos and, in fact, they did, in fact, follow many of the suggestions I had made.

Mr. MCCOLLUM. Mr. Chabot, your time has expired.

Mr. Watt, you are recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman, and I yield my 5 minutes to Mr. Conyers.

Mr. CONYERS. I want to thank my colleague for yielding to me.

Mr. Chairman, our distinguished member of the Judiciary, Ms. Lofgren, came in and apologized for being away from the hearings and it really touched me. I come and apologize for being at the hearings. This thing has taken up days and days of my life. Ms. Lofgren wanted to know how much money we spent on the siege, I will find out how much money—and I am going to find out—how much money we spent on these hearings.

We have got all kinds of problems in America. This thing could have been done in about half the time, at least. And although there have been good things that have come out of it, I can tell you and I know you cannot tell by the tone of my voice, I am really getting tired of this stuff.

But this is my job and I am here and I will do it.

Mr. Cavanaugh, you stated earlier that you felt that the ATF guns sounded like pop guns compared to the Davidians' cannons, is that right?

Mr. CAVANAUGH. Yes, sir.

Mr. CONYERS. Is there any need for me to ask you to elaborate on that or what is behind that?

Mr. CAVANAUGH. I think the only point, Congressman, there is that you should know and the members should know that the 9-mm guns that the ATF agents brought to that scene were done for a purpose. We knew there was a lot of children in there. And we knew there were a lot of women and innocents in there, and that has been discussed by various members.

We never alleged that everyone in there was a criminal in our search warrant affidavit, that was not the case. And with all these innocents in there, our teams, our special teams took mostly 9-mm firearms that they knew would not penetrate those walls, they knew would not go through and hit innocent children.

And, so, in essence the beating we took was because we were trying not to have firearms that would go through the walls. That was the only point I was making.

Mr. CONYERS. Very good. Thank you.

Nice meeting you, Mr. Jamar, you have taken a lot of knocks here, in your absence, over the days about this hearing from not only witnesses but members here on the committee.

I am glad to meet you and welcome you here.

Mr. JAMAR. Thank you.

Mr. CONYERS. I think you did a good job under the circumstances.

How did the range and assortment of the Davidians' weaponry affect your options in ending the siege?

Mr. JAMAR. The weapons we learned of when we first arrived were the dozens of automatic weapons. The fear of a .50-caliber machinegun that turned out to be two .50 calibers with 10-shot magazines. It was not a machinegun. Those .50 calibers produced a lot of concern for us, created a lot of concern for us.

It made us be extremely careful to avoid provocation of any kind but if they would have had mere .22's we would have had the same attitude about the provocation. But the peril that the agents were in was magnified by a great degree because of the problem that automatic gunfire presents and the power of a .50-caliber.

A .50-caliber is antiaircraft. That is the power we are talking about. So that caused us great concern. One of the great concerns—

Mr. CONYERS. How far does a .50-caliber go?

Mr. JAMAR. I think from our place up the street to here.

Mr. CONYERS. What is that?

Mr. JAMAR. Ten blocks.

Mr. CONYERS. Almost half a mile?

Mr. JAMAR. Some people would say 3,000 yards, but I think it can be shot 10 blocks.

Mr. CONYERS. OK. So it is because the arsenal of machineguns or whatever they were and handgrenades that the FBI was forced to use armored personnel carriers around the compound?

Mr. JAMAR. Yes, sir, we would not have been there without them.

Mr. CONYERS. Mr. McCarthy, you were a tactical leader of the Los Angeles County Police Department SWAT team—and my staff prepared the question—the premier SWAT team in the country—and believe me, if Maxine Waters was here, she would not let me say that and I do not, I am reading the staff prepared question—for 13 years, and as the leader of that team, did you ever have the occasion to order the use of CS gas and did your department ever use CS gas on an occasion where people not known criminals were present?

RONALD McCARTHY, FORMER OFFICER, LOS ANGELES POLICE DEPARTMENT

Mr. MCCARTHY. Yes, sir. We used CS gas on numerous occasions. I, personally, over 200, always with a positive resolution where the CS gas, even when used in an extremely heavy concentrations, probably heavier than existed at Waco, in a few circumstances. And in those incidents nobody was injured from the tear gas. And as far as I know no one has ever died of a concentration of CS gas.

Mr. CONYERS. Now, that is one of the things I have learned since the last time the Judiciary Committee held hearings on this subject. Because when General Reno was here we were talking about poison gas and you know, the whole idea. It was not understood what this was and so I wanted to tell you I have learned a lot about CS gas and tear gas and all of its variations on the theme.

You have, then, used this kind of gas in enclosed spaces as apartments and are you aware of any severe injuries and do you have an opinion of the safety of CS gas? And what about the error that the manual that states when CS gas is supposed to be used?

Mr. MCCARTHY. First of all, I am not aware of anybody who has been either killed or severely injured and overcome.

I happen to be, personally, an asthmatic and I have been in CS gas hundreds of times myself, personally.

Mr. CONYERS. What about that lawyer that was here yesterday that kept telling everybody to take a trip up to Quantico and take a whiff if you think that it is not—I mean, I should not be reminding people of that testimony because yesterday was not a good day for me in these hearings. But where do people get this for the American people either?

Mr. MCCARTHY. The fact is that tear gas is extremely uncomfortable, will cause tremendous mucous flow, saliva flow, and your eyes will water severely and you will want to keep them shut. It is very uncomfortable. There is no question of that. But it does not kill people.

The study that was done regarding cubic feet and the amount of gas per cubic feet has been disclaimed twice. Once in 1991 and once in 1993 by the organization that authored it, and it was authored in 1969. And the International Association of Chiefs of Police disclaimed that study and advised tear gas companies, in their periodicals, to refrain from using it because it was outdated.

Mr. MCCOLLUM. Mr. Conyers, your time has expired, the time from Mr. Watt.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. MCCOLLUM. You are welcome.

Mr. Souder, you are recognized for 5 minutes.

Mr. SOUDER. Thank you, Mr. Chairman.

Mr. McCarthy, has the LAPD ever gassed children under ten in a confined area?

Mr. MCCARTHY. We have not gassed children as far as I know, however, in a similar circumstance in a 51-day circumstance I would not be in disagreement for the use of it.

Mr. SOUDER. I just wanted to establish that in the 200 incidents there were not children in a confined area, is that correct?

Mr. MCCARTHY. No, sir. We did not have that kind of an incident.

Mr. SOUDER. I understand that.

I wanted to ask Mr. Jamar, I am actually confused and I do not have a firm opinion. I want to get a clarification.

In the tapes on March 4, it has been alleged that David Koresh was the person who initially called about the milk or did the FBI suggest the milk? Did David Koresh ask for milk?

The report here says the FBI offered milk in return, did Koresh initiate the milk request?

Mr. JAMAR. I think so, yes.

Mr. SOUDER. And did, was this on the tapes, let us get her, that is Heather Jones out, and then we will send you the milk.

Mr. JAMAR. I am sorry, would you repeat that? There was noise behind me. I could not hear you.

Mr. SOUDER. Let us get her out and then let me send you the milk. In other words, a core question here is that the FBI offered milk in return for the release of some children.

Mr. JAMAR. Right.

Mr. SOUDER. Yesterday, we heard that Koresh believed that the promise was violated and that the tapes suggest that there is the

phrase—now there may be other phrases in it, too—but let us get her out and then let me send you the milk.

Mr. JAMAR. Well, that was an effort to—remember this was March 4—this was an effort to establish a quid pro quo, an exchange here.

Mr. SOUDER. And then the next day she came out, Heather Jones?

Mr. JAMAR. Yes. But it was an effort to get that done. She did come out but that exchange was an effort by the negotiator to establish that type of a relationship and communicate with Koresh.

Mr. SOUDER. So do you believe that then not sending the milk after she came out the next day gave Koresh some reason to doubt whether or not you were going to follow through on the negotiated deal? You do not believe that was a negotiated deal, send her out and we will send you milk?

Mr. JAMAR. I do not think it was at all. He choose to let her go for his reasons. He never would involve himself in a quid pro quo.

Mr. NOESNER. I think that is out of context. I do not believe that we ever made a deal with Mr. Koresh that we did not follow through on. Mr. Jamar is right. In a classic hostage situation, which this was not and we have never characterized it as such, although others have, in a classic situation like that the individual holding the hostages is doing so to compel the authorities to fill a demand.

We did not have that situation here whatsoever. So it was very difficult for us to make these quid pro quo agreements with David Koresh. But what we would do, we would do some act in a positive nature, send in milk or send in a tape or whatever it might be, and occasionally he would do something positive in return. But you could not pin him down on making a firm promise for a firm act of good faith on our part.

Mr. SOUDER. I am still a little confused. I may ask some written questions afterwards, but it helps some. I want to yield the balance of my time to Chairman McCollum.

Mr. MCCOLLUM. Thank you, Mr. Souder, for yielding.

Mr. Sage, you said earlier that in a discussion with Mr. DeGuerin about the agreement on the interpretation of the seals, that he indicated to you that it would take 20 days approximately, 2 or 3 days per seal to do this. When did he have this conversation with you? Was this on the 14th of April or was this before that?

Mr. SAGE. My recollection was that it was approximately the 14th. I do not know specifically but that is the general time frame.

Mr. MCCOLLUM. All right. Mr. Jamar, what I want to know on this very same type of point is that you had given us an indication that you were aware of all of this going on, you really did not have any confidence that Koresh would ever come out but that this seal interpretation writing was to take place. You have also told us that there was no evidence, over the weekend, of the last 2 days before this last assault occurred, that any progress was being made on the writing of these.

Mr. JAMAR. Yes.

Mr. MCCOLLUM. At any time, did you ever indicate to Mr. DeGuerin that between the 14th, when this whole arrangement was being discussed, and when the writings were to occur that

there was not going to be 20 days, or that if he did not show some progress, if he did not bring one of them out within a couple of days, that was going to be the end of it?

In other words, did you give Mr. DeGuerin any indication that his client did not have any real time to do this or did you tell him that he had to show some good faith by producing something immediately?

Mr. JAMAR. Well, I think that the idea of producing it was clear to us both, that we expected something. They used 2 to 3 days for each one. So we expected some progress in the next 2 or 3 days.

Mr. MCCOLLUM. But you never told Mr. DeGuerin that if it did not happen it was all over or something else was going to happen?

Mr. JAMAR. Well, I did not know something else was going to happen.

Mr. MCCOLLUM. Well, you did at some point.

Mr. JAMAR. I did the 17th. I am not going to call Mr. DeGuerin and tell him we have an operational plan we are going to execute on Monday.

Mr. MCCOLLUM. I do not expect you to tell him you have an operational plan, but I would have expected you, knowing that you did not have any faith in this to begin with, and did not believe in it to begin with, that you would have at least given him some indication that his client, you know, better hurry up and produce something now because we are not sitting around here for 20 days on this. You ought to know it is highly improbable we are going to spend 20 days sitting around here waiting for him to produce one of these things.

Did you ever make that clear to him in that kind of fashion?

Mr. JAMAR. I do not think it had to be that emphatic. I think he knew that.

Mr. MCCOLLUM. Well, he did not indicate that to us yesterday by any stretch of the imagination. In fact, he indicated to us quite the contrary yesterday. He indicated that he was deeply disappointed and that he would consider himself greatly deceived by you had he learned what apparently he is now learning to date, that all along you did not really expect this to happen and that he did not have it. He thought this was a commitment. That is what he said.

I do not know the merit of this. I am not trying to prejudge it.

Mr. JAMAR. I understand. I saw the testimony. I know what he said. And he has been quoted as saying that in the past in the media or he said that I said there is plenty of time and there would have been plenty of time if there had been some production. We would have stayed. We would not have done what we did on the 19th had there been some production.

Mr. MCCOLLUM. Well, but again, my point is that you did not really hammer that home to him. You said you did not need to know that. You thought that was a given. Obviously there was a miscommunication here in some form or fashion or at least there seems to have been.

Let me ask one last question while we are involved in this area altogether.

With regard to releasing people, there has been some question raised by Mr. DeGuerin and Mr. Zimmermann yesterday and a couple of the others, I think maybe Mr. Tabor, that I believe, Mr.

Jamar, you indicated that when one of the Davidians, I think Kathy Schroeder, was let out early you played a tape back in. Maybe Mr. Sage indicated that.

But the tape related that things were going all right for her and so on. That was pretty early on in this. That was in March, correct?

Mr. JAMAR. Mid-March.

Mr. MCCOLLUM. What I am getting at in my question is that Mr. DeGuerin or Mr. Zimmermann, I have forgotten which, along with Mr. Tabor, I think indicated that, at the end of March or April, there were some witnesses, meaning some people who had been in that compound who came out—not witnesses but Davidians—who were put in jail, who were not given the kind of freedom that one would have expected.

They said that everybody who came out was put in jail. They were separated from their children, because the Child Protective Services took the children and that this was a bad message going back in there.

Now, would you care to respond to that, Mr. Jamar?

Mr. JAMAR. Please. The first two adults who were released were elderly ladies, they were charged with capital murder. I complained to the U.S. attorney and they changed it to material witness warrants.

And it was a horrible message that sent back.

Mr. MCCOLLUM. But they still kept them in jail?

Mr. JAMAR. I do not know how long they stayed in jail. I do not think they stayed in jail for very long, those two ladies. I could be mistaken, but I think it is worth checking into. I do not think they were in jail that long. I think they got out.

Now, the other adults who came out were held on material witness warrants thereafter and were held in jail. Now, there was never parents and children out together. Never. So never were parents and children separated by the authorities. There was never an instance where parent and child came out together.

Mr. MCCOLLUM. Thank you, very much.

Now, Ms. Jackson Lee, you are recognized for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, thank you, very much.

I want to thank the witnesses for being here today and testifying on some very important issues.

I think we have already heard testimony isolating the actions of Mr. Koresh as being plainly antisocial behavior and antisocial personality.

I imagine as these hearings are unfolding, particularly for you gentlemen, the American people might wonder again and we have heard this question queried to you and asked, why did you not wait? They might be asking that question. I think they also should know that about 34 persons went out on your clock, up until about March 23, that people were coming out, they were abandoning the circumstances. And Mr. Jamar, I am going to ask this question of you, you might want to say how many came out. But I do want you to, again for us, give me why we moved from the negotiating posture of trust and calmness and we want to work with you, to the position of stress, heightening the stress, creating adversity?

And I want to ask my other question, as well, afterwards. You have been in the FBI, you will tell me for how many years? I know you are a senior member of the FBI.

Mr. JAMAR. When I retired I was 25.5 years.

Ms. JACKSON LEE. 25½ years. And this is a very large Nation. Would you imagine in your service that there are a variety of groups living in different ways, whether they happen to be pacifists, or whether they happen to be people who are environmentalists living in very rugged conditions across this Nation? I would ask you as to whether or not your understanding is that they still live in peace across this Nation, although they may be different and we may not even know of their existence or the fact that they are there. You may know it. And I would like to have those two questions answered before I move to Mr. Noesner.

Mr. JAMAR. Let me answer the second one first if that is OK. I think there are plenty of groups of people who are living together in peace and doing just fine. The difficulty is when——

Ms. JACKSON LEE. And they are different?

They are far different from——

Mr. JAMAR. They are different. They could be growing different food and then doing whatever totally odd behavior or totally foreign to most people. The difference between this group and all others is this was a group of people who were absolutely devoted to a person who would abuse everything about them. Who would abuse religion for his end to suit any purpose he wanted.

He would abuse any of their assets, any of family members, any of them to serve him. And what he had, absolute devotion, and when that devotion faltered or if you did not follow discipline, out the door you went.

That is the way he controlled things and that was it. That is the difference between this group and 99.9 of the others, I pray. This is an absolutely extraordinary control here. I like to think that these type of groups are extremely rare and we will not run into people like this.

Ms. JACKSON LEE. We have already established the enormous number of weapons that were in the compound. I wish you were here yesterday with the lawyers, the balance would have added to our understanding. Because the question becomes, why did the other individuals who were with their faculties, they were trained and educated people did not separate or distinguish themselves from this gentleman, Mr. David Koresh, who the documents reinforce over and over this bizarre personality and bizarre attitude and actions.

Why could not they get separated and how come you could not reach through to that component of the compound?

Mr. JAMAR. Stephen Schneider is a perfect example of the person that you describe. He was a highly educated person with a master's degree in religion. He was, I think he was a successful person in his ability to support to himself, married to Judy Schneider. Comes to, he is recruited by Koresh in Hawaii. He leaves Hawaii to come to live in these conditions. In fact, he talked about it during the negotiations. He said, you think you gave up something? I came here from Hawaii. So he was very conscious of all that.

But he gave up not only his life to come there. He gave up his wife to Koresh. They were unable to have children together.

Ms. JACKSON LEE. He admitted that.

Mr. JAMAR. Yes. He and Judy were unable to have children together. She had a child by Koresh. I mean that, it is the degree of devotion by this man who was highly educated, a successful person by anybody's measure, he gave himself totally. And we worked on him and worked on him and worked on him.

There was an instance where I had occasion afterwards to talk to his sisters on a television program. And they asked me why did we not let them talk to him? And I said, when was the last time that you saw him? Did he come home? Were you able to convince him to stay and they said no.

Ms. JACKSON LEE. I want the American people to know that you made those individual separate inquiries because it is a question of why we moved from stress to then, or rather, from trust to stress. But you did make an effort to get to individuals to separate them out.

I do want to move quickly to my next question. I think you have made that point, Mr. Noesner, and I am going to try to ask you a question on that matter.

As we move toward the CS gas determination, I think Mr. McCarthy has indicated that the gas does not kill. Is that what you just said, Mr. McCarthy?

Mr. MCCARTHY. Yes, that is correct.

Ms. JACKSON LEE. It is frightening, however. Gas, people attribute explosions and tragically, fire.

And Mr. Jamar, a simple question, did you want those people to come out alive?

Mr. JAMAR. Absolutely.

Ms. JACKSON LEE. And in terms of the CS gas and its decision to use it, and utilize it, did you have an architectural understanding of the location or the structure of that building and were you all prepared to isolate out people and get them out? Did we have the routes out for them to come so that you could effectively be looking for these people to be pouring out at the time of the gas being inserted and how would that track with the bulldozers going in?

Mr. JAMAR. OK, the premise of the delivery of the gas first was to the corner of the compound. There is not a picture up there now, but I think everybody has this image in their head on the, what we call the——

Ms. JACKSON LEE. If someone could put the picture up I would appreciate it.

Mr. JAMAR [continuing]. The red/green corner is where we started. The premise of the plan was to deliver that gas there and the idea was that gas is in your compound, we are going to make your compound uninhabitable and then we are going to back away. But when they fired upon the—the first thing, only one tank approached. We have put concertina wire——

Ms. JACKSON LEE. Give me the sound it makes, the fired upon, can you make the sound?

Mr. JAMAR. I am sorry, the automatic gunfire was piercing at the tank as it drove up. What that did was cause us to deliver gas in

the whole compound, particularly the tower, to try to take that part away.

But the plan was to make the building uninhabitable. And this is the type of stuff if it gets on say, a loaf of bread or a milk bottle or glass or anything, it just stirs up all the time. It just never goes away.

The plan, we expected to do that for 48 hours. We expected some to come out immediately. We expected it would take us 48 hours to contaminate the whole place, if they did not respond to us. Which is they would have said, stop, we want to come out, that would have been the end of the gassing right there, that would have been the end of it right there.

Mr. MCCOLLUM. Thank you, Ms. Jackson Lee, your time has expired.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Mr. Mica, you are recognized for 5 minutes.

Mr. MICA. Thank you, Mr. Chairman.

Mr. Chairman, just one thing I want to keep the record always clear. I heard somebody on the other side of the aisle and when you get involved with a bunch of attorneys you have to make sure you keep the record straight.

I am not an attorney. I passed this out yesterday and it deals with the law and I read the law as it is in Texas relating to use of force in arrests in Texas. I did not comment on it. I asked the Texas Rangers whether, in fact, if that was the law? And they replied in the affirmative. Then I quoted from the report of the Treasury Department their conclusion, certainly an armed assault by 100 agents had to be seen as an attack independent of who fired the first shot. Not my commentary. I have never said that there is any justification for the killing of four ATF agents and wounding of others, and I want to make that perfectly clear. And I will see anybody outside who disputes me on those facts.

Mr. Cavanaugh, let us go through. You were, this morning, very emotionally describing your participation. I want to get to some of the points leading up to your participation. And I have this memo relating to your comments at a Waco administrative review that was done in November after all this occurred.

First meeting you attended in December 1992, you had said to Sarabyn, you will have to negotiate this one, is that correct?

Mr. CAVANAUGH. Yes, sir.

Mr. MICA. Pretty much? Second meeting, you stressed two main points, you needed to negotiate with Koresh if at all possible, and two, remove Koresh and his top five lieutenants from the compound, if at all possible. Those were your recommendations, correct?

Mr. CAVANAUGH. Yes, sir.

Mr. MICA. And then you said a ruse could be used to get Koresh and his top followers outside the compound, correct?

Mr. CAVANAUGH. Yes, sir.

Mr. MICA. Then you were taken away from this. This was the second meeting and you came back and when you left, you left with the impression that the Houston division had decided to siege the compound, is that correct?

Mr. CAVANAUGH. When I left——

Mr. MICA. You left with that impression?

Mr. CAVANAUGH. Yes, Congressman.

Mr. MICA. Then in January you were very surprised to learn a new turn of events that they changed their plan and that Sarabyn said that he had new information and that they were going to use a different approach, is that correct?

Mr. CAVANAUGH. Yes, sir.

Mr. MICA. Then you said that you read the plans and it said there was no provision for a negotiator as you had originally stressed and, two, there was only one public information officer assigned to the plan, were those your objections?

Mr. CAVANAUGH. Yes, sir.

Mr. MICA. All right, then Cavanaugh, you later raised questions. You said you were concerned because only different bits of information were given at different meetings. It was conceivable that one would have received more information on the types and numbers of guns at one briefing. That was one of your concerns, was it not?

Mr. CAVANAUGH. I am sorry, Congressman, as I recall it was the types and bits of information at that meeting, not——

Mr. MICA. But you did not know exactly this quantity, this vast quantity of weapons that were available and to be used against you, was one of your concerns or you said it might have been at different meetings and not everybody had the full picture.

Mr. CAVANAUGH. OK. I do not recall it exactly, I am sorry.

Mr. MICA. And then you asked also I think you urged Sarabyn to call the thing, well to call the thing off and Sarabyn wanted to proceed on Saturday. But he said the helicopters were not ready and the training was not complete—that Saturday night before the raid, is that correct?

Mr. CAVANAUGH. Yes, sir, I always only felt this should be negotiated.

Mr. MICA. I am sorry, and the morning of the raid, it is not like this—the Waco Times had already done the story, right?

Mr. CAVANAUGH. Yes, sir.

Mr. MICA. And you were concerned about this, right?

Mr. CAVANAUGH. Yes, sir.

Mr. MICA. And the morning of the raid, you were in this observation thing. Did you not see newspapers, more newspapers and media activities? In fact, I think you identified a Waco Times vehicle right near the front door of the compound, is that correct?

Mr. CAVANAUGH. Yes, sir.

Mr. MICA. And then you said that the decisions were ongoing, wait, you said the go versus no-go, was in the hands of Wanaki and headquarters. Furthermore, Sarabyn told you that discussions were ongoing between ATF headquarters and the Treasury and said that he felt as if that your input did not matter since the decision making was proceeding at a much higher level than your level, is that correct?

Mr. CAVANAUGH. Yes, sir, that would have been not Sunday morning. That would have been probably more Friday and Saturday.

Mr. MICA. Well, all right, we will go on from that. You were also concerned that there was bad information from Rodriguez, is that correct?

Mr. CAVANAUGH. Concerned it was bad information?

Mr. MICA. Yes. That Rodriguez was not giving good information. What I am trying to say is that at every point you expressed concerns about this.

Mr. CAVANAUGH. Yes, sir, I can elaborate, if you would like. I did.

Mr. MICA. Then when you found out that this had been sort of, you know, a media event, too, that got out of hand, that, in fact, that the press Ms. Wheeler and some of the others, there were media out in front of the place. You said, and this is you, you said that everyone at the undercover house was wondering whether the raid would be called off. Were those your comments that morning?

Mr. CAVANAUGH. Yes, sir. I think there is varying degrees of apprehension that we felt in the undercover house. And——

Mr. MICA. The other thing, sir, you know I am only sent here temporarily to find out what went on with Government resources, personnel, agents, we are not here to get anybody. We just want to find out. We never even made a statement that these reports were false or anything.

Mr. Hartnett, though, who was overseeing a lot of this operation, talked about this report, this inside Treasury report and it said that that report was filled with distortions, omissions, and in some cases, things that were simply untrue. I believe it was done for political reasons. The politics of the situation became more important than the people involved and then he resigned.

He said that, I did not say that. These people on this side of the panel did not say it. This is the Treasury agent in charge of the whole situation.

What do you think, who is responsible here?

Mr. CAVANAUGH. Mr. Congressman, I can only speak to the Treasury report as it addresses my role. And I feel like they were candid and fair with me. I can tell you that they were extremely grueling in talking to them. I mean it was very rough. They left no stone unturned in my situation. And I felt like they portrayed my role fairly and that is all I can say.

Mr. MICA. I thank you.

Mr. MCCOLLUM. Thank you, Mr. Mica.

Mr. Taylor, you are recognized for 5 minutes.

Mr. TAYLOR. Thank you, Mr. Chairman. And I want to thank Mr. Condit for working with me on this.

Gentlemen, a lot has been made by some people in this room about the use of CS gas, especially when there were older people and children present. But as one of the earlier witnesses said today, David Koresh got rational people to do totally irrational things, they would give their wives to him. They would give their wives to Koresh. They would give everything they owned to Koresh. They would let him have sex with their very young children.

Then it would follow that Koresh could have told these people to get up and walk out, and they would have listened, would they not? Is there not becoming, at least I seem to be noticing more and more, a case where people who do despicable things have increasingly started surrounding themselves with innocence as human shields? And is it not accurate to say that Koresh kept little kids and old women and old men around him as human shields?

Mr. JAMAR. I will answer that. He kept people around for his personal use. If it was an appropriate time to use a shield, he used them as a shield. If it was something else, he would use them for that.

Mr. TAYLOR. But I, like everyone else, regret the death of those young people and those old people, but the bottom line is if that man had had a shred of courage or a shred of decency, he could have told them to walk out.

Mr. JAMAR. At any time.

Mr. TAYLOR. At any time. For 51 days, let the record show, that coward could have turned to those children and said leave, you are in danger here. He could have turned to the old people and said leave, you are in danger here. He chose not to do so.

Mr. SMERICK. Sir, Koresh could not have done that, because not only were the children shields for him, he recognized the fact that he was the father of those children. The mothers of those children were under age when they gave birth, which means with the DNA testing it can be proven that he had carnal knowledge of women who were under age. He knew that if he came out of that particular compound, he was not going to prison as a religious martyr who defended his religious faith, he was going to prison as an individual who was a child molester. That is one reason why I believe under no circumstances was David Koresh going to surrender and come out of that compound alive.

Mr. TAYLOR. Thank you for adding that.

Mr. NOESNER. Mr. Taylor, could I add something to that?

Mr. TAYLOR. Absolutely.

Mr. NOESNER. I think there is a misunderstanding that has occurred today about there only being a few occasions where specific surrender discussions took place. I think the record should show that if anyone really listens to those negotiation tapes, the hundreds of hours of tapes, Koresh represented day-in and day-out that in fact he was coming out.

It was a rare occasion where he would say I am not coming out. Almost every day he said he was coming out. He just simply did not do it. So for him to represent to the attorneys or to represent to us throughout, this was hardly brand new information. He had been saying this to us every single day.

Mr. TAYLOR. Since I know my time is running out and it is a rather large panel, I am going to ask you the same question I have asked every other panel. We have all now had 2 years of hindsight, and many of you were there on the scene. Has there been anything you have seen, anything you have read, anything that you have heard that justify the murder of those four ATF agents, Conway LeBleu, Todd McKeehan, Robert Williams, and Stephen Williams, and the wounding of 20 more by David Koresh and his followers? Does anything that you have seen justify that?

Even the two criminal defense attorneys yesterday who first said yes, it was justified, when I asked them which one of these agents should have died, they backed down real fast. So is there anything that you gentlemen have seen to justify their murder?

Mr. SMERICK. Nothing would have justified the murders. In fact, what I saw as a behavioral scientist was a calculated plan by David Koresh to put his plan of action into action, meaning they

were not a peaceful religious order minding their own business, perhaps collecting some weapons. He went out of his way to attract the attention of law enforcement so that there would have to be some sort of a response in the future.

So we learned through the investigation by ATF agents, for instance, that he had his followers get credit cards and run up the limits so that he knew somebody was going to be investigating that. There were allegations of child abuse, so he knew someone was going to be coming out to the compound to investigate that. He collected so much arms and ammunition beyond what is necessary for your own self-defense that he knew sooner or later either ATF, the sheriffs department or somebody was going to have to investigate that particular matter.

When ATF showed up at that particular day, he had several choices in front of him. He could have surrendered. He could have fired warning shots in the air to stay off my property. He chose none of those particular events. Instead, he waited for the ATF agents to come up to the compound and then he ambushed them in order to put his plan into effect. David Koresh, in my mind as a behavioral scientist, is not a religious martyr. He is a psychopathic criminal, a killer who used religion in order to exploit people for his own benefit.

Mr. TAYLOR. Thank you, sir.

Mr. Cavanaugh.

Mr. CAVANAUGH. Mr. Taylor, there is no reason in America that anyone should shoot on a law enforcement officer serving a warrant.

Mr. TAYLOR. Mr. Sage.

Mr. SAGE. I would agree wholeheartedly with what you have heard. I would also state that I am very concerned, frankly, with the precedent set by anyone embracing the concept that criminals have a right to exercise justifiable force, what they feel justifiable force against officers that are exercising a lawful warrant. That puts all of our society in harms way.

Mr. TAYLOR. Mr. Jamar.

Mr. JAMAR. I think that observation adds to the others that during a period of time when the defendant in many cases becomes the victim and everyone else is forgotten. I think this is a perfect instance of that.

Mr. NOESNER. I certainly agree with those comments. As we have heard, Mr. Koresh told Robert Rodriguez that he knew ATF was coming, so he was fully aware of who was coming to his front door that day, the way they were equipped, the way they were attired, and to take that kind of action against them is just simply murder, and there is no way you can justify that.

Mr. TAYLOR. Mr. McCarthy.

Mr. MCCARTHY. If you are going to take away from law enforcement the opportunity to survive, serving a search warrant issued by a judge, which is absolutely valid on its face, then you are going to condemn law enforcement to being totally incapable of supporting a democracy.

Mr. MCCOLLUM. Thank you, Mr. Taylor. Your time is expired.

Mr. TAYLOR. Thank you.

Mr. MCCOLLUM. Mr. Bryant, you are recognized for 5 minutes.

Mr. BRYANT of Tennessee. Thank you, Mr. Chairman. At this time, I would yield my time to my distinguished colleague from Arizona, Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Bryant.

The topic of this panel really is negotiations and I want to go into that issue in a little more depth. We established earlier that your goal was to get people out without any more deaths. That obviously should have been an important goal. At some point in time, however, a decision was reached that negotiations were not making progress and that you had to do something further, and indeed that led to the gas insertion plan.

Mr. Sage, the Department of Justice's own report pretty much lays all of that at your feet. It says there was a meeting in Washington on April 14, it appears the Attorney General was resisting the gas insertion plan. She was frustrated. She asked the question of why now. And it says both it and an interview I have say that people were directed to talk with you and that they did talk with you.

And this report says that there was a 2-hour telephone conversation with Webb Hubbell and you in which you said further negotiations with the subjects in the compound would be fruitless, that the only people Koresh had released were older people or people who had given him problems during the time they were in the compound or children whom he had not fathered.

It says further that you advised Hubbell that Koresh had been disingenuous with his discussions with you about the Seven Seals. Is all of that accurate?

Mr. SAGE. Yes, sir, it is.

Mr. SHADEGG. And it goes on to say you were convinced that the FBI had not succeeded in getting anyone released from the compound through negotiation. There were 35 people released, were there not?

Mr. SAGE. Ultimately, there was as total of 46, if you subscribe to my definition, 35 people that actually came out prior to the 19th.

Mr. SHADEGG. Why did you tell Webb Hubbell that you had not succeeded in getting anybody out through negotiation?

Mr. SAGE. Because my definition was the quid pro quo and that is exactly the context in which it was expressed to him. We were discussing——

Mr. SHADEGG. The only thing that came out as a result of a quid pro quo, was that a successful——

Mr. SAGE. If I can finish my response to you, Congressman, I would be happy to. What I told Mr. Hubbell was that, from a definition of a negotiated effort, normally a hostage negotiation—in this instance it was not—that we had very limited success in a true definition of a negotiated release of individuals. I was convinced at that time, and I am absolutely convinced now that the only people that Mr. Koresh would let out or directed out in hindsight, which we did not have the privilege of then, were the elderly, the infirmed, those children which were not of his direct line lineage and troublemakers.

Mr. SHADEGG. I read that. I know you have a right to answer the question. I just have a very limited amount of time. I heard that answer. Can I move on?

Mr. SAGE. My apology.

Mr. SHADEGG. It goes on to say that Hubbell recalls Sage saying he believed there was nothing more here the negotiators could do to persuade Koresh to release anyone else or to come out himself.

Mr. SAGE. That is overstated. My comment to him was something to the effect that we had not abandoned negotiations. As I mentioned earlier, I personally did not give up hope in negotiations until practically 12:30 on the afternoon of the 19th of April.

Mr. SHADEGG. Here it says in the memo from the Justice Department, an interview of Webster Hubbell, it says the Attorney General was told negotiations—and this is based on the conversations that you had—she was told that negotiations would not get anyone else out of the compound and that negotiations were at an impasse. Now, all of this is happening on April 14 and 15. In point of fact, the defense attorneys who were here, whom you can disbelieve if you want, clearly believed themselves that negotiations were not at an impasse, that in fact the even seal strategy was a new one and that it might work.

My question is did you advise Webster Hubbell of those new negotiations based on the seven seal of what the defense attorneys believed about them and give him a chance to pass that information on to the Attorney General?

Mr. SAGE. First of all, the Seven Seal issue was anything but new. We were hit with the concept of explaining the Seven Seals and they would all come out literally right from the first day, in fact, I believe the evening of the 28th of February.

My conversation with Mr. Hubbell was that the negotiations were at an impasse as far as the possibility of a substantial number or substantial flow of people out of that compound in the near future, foreseeable future. I did not then, nor do I now feel that we were at a process where we should abandon negotiations.

Mr. SHADEGG. So you did not think that their renewed sense of enthusiasm on the 14th as expressed to Mr. Jamar was valid at all, and you thought they were just mistaken about that?

Mr. SAGE. My recollection of this is that the emphasis placed on this new timetable which was relayed once again by the attorneys, not by Koresh ever, came after this discussion with Mr. Hubbell in my recollection. It did not change anything ultimately, because we continued to press for any indication that this was a true genuine effort and that there was progress being made. There never was.

Let me explore that a little further. This was brought forth as an allegedly viable option on the 14th and has been stressed significantly here. We continued to press as to whether or not this was valid through the course of negotiations. On the 16th, Judy Schneider, who during the course of conversation and negotiations expressed that she was the primary typist here, indicated to us that due to the equipment they had inside, that this could take up to a year to complete.

Mr. SHADEGG. And you gave her more equipment, did you not?

Mr. SAGE. We sent in first of all tapes for the manual typewriters they had. We stressed that the concept is fine, but we can provide you with all the equipment you want, if you will just come out, we will facilitate—in fact, the sheriff endorsed that concept.

We continued that probe as recently as the evening of the 18th of April. The evening before the raid, Steve Schneider admitted to the negotiators that he had not seen the first—I am paraphrasing here, but the quotes are available to you——

Mr. SHADEGG. I am going to run out of time.

Mr. SAGE. The first page of the First Seal here he had not seen yet.

Mr. SHADEGG. Let me switch topics. I have to ask you one more question.

Mr. SAGE. Yes, sir.

Mr. SHADEGG. This is in fact not a routine hostage situation.

Mr. SAGE. It never was.

Mr. SHADEGG. That has been testified to. The point is you had some people on the inside who to your knowledge were not involved in criminal conduct, and the children could not have been involved in criminal conduct. They are incapable of forming criminal intent. So you had people on the inside who were there, but to the best of your knowledge they were not being held at gunpoint. Indeed, Ms. Schneider you just mentioned, one of the purposes of the microphones or the speakers was for you to be able to broadcast the message back in, so that if Koresh was not telling them everything in the negotiations, they could hear that.

Mr. SAGE. Correct.

Mr. SHADEGG. My concern and my question of you is there came a point in time sometime over that weekend—and I would like both you, Mr. Sage, and you, Mr. Jamar, to answer this—there came a point in time where not only had you decided that further negotiations were hopeless and told FBI Washington and they told the Attorney General in Washington, and the decision was made to go with the gas plan.

My question is, given that this is not a normal hostage situation, there are not guns being held at the heads of all of the mothers or all of their children forcing them to stay in the compound, was there not a duty before you inserted the gas to warn the mothers and the children, children that were cognizant, if they could, that the negotiations had failed, on the chance that Koresh had not told them, and to give them some last chance? You are not dealing with normal hostages who have a gun at their heads who cannot jump off the airplane.

You are dealing with women and children who, if Koresh does not tell them that the negotiations have broken down and you do not tell them that the negotiations have broken down, they have no reason to leave the compound, and yet a point in time comes when you start inserting gas. Was not there an obligation before you pushed the gas in to allow them——

Ms. JACKSON LEE. Mr. Chairman, how long is the question going to go on?

Mr. MCCOLLUM. Regular order. He has a right to finish his question. He started it when the yellow light was on.

Ms. JACKSON LEE. I hope we will be extended the same courtesy, then, because I have been cut off and was not able to get my question answered when the red light went on.

Mr. MCCOLLUM. Regular order.

Mr. SHADEGG. Was there not an obligation as to those innocent children and the women who were not involved in criminal conduct to at least warn them that negotiations had broken down, and maybe not tell them that teargas was coming in, but tell them that some confrontation was going to occur and if they wanted to run out the backdoor, they had better do it soon?

Mr. SAGE. Do I have time to answer that?

Mr. MCCOLLUM. You have time to answer, yes, Mr. Sage, and Mr. Jamar, too, if you want. Please go ahead.

Mr. SAGE. It is kind of a-question question. First, whether or not there was an expression that we were at a total impasse and that further negotiation was hopeless, I believe was the term that you used, and I have seen that referred to in the report.

Mr. SHADEGG. It is in the document here.

Mr. SAGE. That is correct. As I mentioned before, I think that is an overstatement. It may well have been the recollection of Mr. Hubbell. I cannot speak for him, but I can speak for myself.

I never abandoned the concept or the hope that negotiations could successfully and peacefully resolve this matter. My statement to him at the time, and there were several people privy to this conversation both in Washington, DC, and in Waco, was that I felt that we were at an impasse, that we had not gotten a single child out, which again was our first priority, since the 5th of March. This is the 15th of April, not that it was completely over, but a realistic assessment of it was that we had obviously reached a very significant point that we needed to factor into further consideration. And this was a consensus of the negotiation team, not just me. Mr. Hubbell wanted to talk to a member of the negotiation team, and I was selected to participate in that conversation and was more than willing to do so.

No. 2, as far as the release of those children, we specifically from the first day—and it has been elaborated upon quite efficiently by Mr. Cavanaugh and I think by the rest of the panel—that was our primary focus. The last child came out the 5th of March. We continued to press. There was one point in time when David Koresh said to the negotiator that the rest of these kids are different. We said wait a minute, David, you said that all those kids were your kids and they were precious, and so forth. This again is paraphrasing, but we can get you the exact quote or if it is already available to you.

He later said very specifically and candidly, because I remember it because I will never forget it, it raised the hackles on the back of my neck, he said basically these are my biological children, and he said it in such a fashion that it was very clear, if not articulated, that they were not coming out. That was the 7th of March.

We continued to pursue every viable option to try to get not only just those children, but everyone out of the compound. The last aspect of it was the notification. That is a very valid question. There was continuing notification, continuing opportunity for them to come out for 51 days.

We talked during the course of this matter a total of 949 conversations during the course of the negotiations, 949, a total of 214 hours, almost 215, and we talked to a total of 68 people, including mothers and children. Every single person that we talked to, we

asked them at least two core questions, are you there voluntarily, and can you please make arrangements to come out. Every single one of them said they did not want to exit that compound. That has to be a part of this record. We tried to get them out constantly for 51 days. For 24 hours a day, 7 days a week, we were available to facilitate that.

As far as formal notice, when ultimately the decision was made to go in the morning of the 19th of April to exercise what we felt was the lowest potential threshold of threat to those people, and that is the introduction of a nonlethal tear gas, I was the one that put the telephone call into the compound at 5:59 in the morning. That was one of the toughest calls I ever made. At the same time that I was on the phone, I had a microphone clipped to my vest informing everybody over that PA system that we were in the process of delivering a nonlethal tear gas into the compound. We were not entering the compound. That is why we referred to it as not being an assault. We have taken a lot of lumps on that comment.

The reason I said that is we had no intention, nor did we ever enter that compound in an armed fashion. That was a formal notice to every mother, every child, every parent, anybody that had a common shred of decency. I am telling you, I have been through CS gas a number of times and I would move heaven and earth to get my children out of that type of an environment.

That is why it was introduced, Congressman, to initiate an environment which would cause those people to come out safely, not even orderly. At the end, before the fire and certainly after the fire, we begged them, I begged them to come out through any exit they could and to follow the instructions of the agents waiting to provide them with medical assistance and take them into custody.

Mr. McCollum. Thank you.

Mr. Jamar, do you wish to respond, Mr. Jamar?

Mr. Jamar. Yes, sir. Thank you.

I think the duty also includes that we do not sit still and let their children die of disease, we do not sit still and let their children continue to be abused, we do not sit still and let Koresh pick the time to leave the compound at 1 o'clock in the morning with a horde of people, with a child under one arm and a machinegun under the other. I think that duty extends to ensuring that we do everything in our power to get those people out, but also at the same time make the area safe for them. So that is why we cleared the stuff out, to make it harder for Koresh to do a breakout.

The first day was as breakout. You know, suicide by cop is one way of putting it. It was something that we feared absolutely. When we learned of that suicide pact, which we did not learn for several weeks, and it was not corroborated until afterwards, but it was a fear. That duty extended to doing everything physically and emotionally and mentally and through any speech or anything else we could do, that duty extended in everything we brought to that place, and that duty I think we exercised in the best way we could do it. And the failure was, our failure, no question about that, that failure was made certain by David Koresh.

Mr. McCollum. Thank you.

Mr. Condit, you are recognized for 5 minutes.

Mr. Condit. Thank you, Mr. Chairman.

Mr. Jamar, Mr. Sage and the rest of the panel, I would like to focus just a little bit. During this whole episode, the news media and the news networks reports prophecy by Mr. Koresh in terms like "all the saints will die through explosion, blood and fire." These were prophecies that he had been making.

My question to you is did you ever consider his prophecy as a possibility that there would be a mass suicide by fire? To me, it seems that you had to take that seriously, and did you make preparations for that, that there would be a fire? What was your planning process for that?

My understanding is that you had to call the Waco Fire Department to help you put out the fire. I am wondering, did you anticipate there might be some substance, some truth to the prophecy? Did you take that seriously, and did you plan for it?

Mr. SAGE. Let me answer the suicide portion first, and then I will turn it over to Mr. Jamar.

One of the toughest things as a negotiator—I have been a negotiator for 18 years in the FBI—is the issue of addressing an individual, and you can well imagine that they may be potentially suicidal with that very topic. But the mental health professionals will tell you that that is precisely the manner in which that should be done and that is exactly what we did repeatedly, and that can be brought to your attention in the form of the negotiation tapes.

We addressed both with Schneider, directly with Koresh, with Wayne Martin, with a number of the individuals, particularly those in leadership roles, the possibility as bluntly as do you intend to commit suicide. The responses were overwhelmingly that they did not. Koresh on occasion said he was too young to die in there. Schneider mentioned specifically that that was against their religion, it was a sin, an unpardonable sin, I believe he mentioned. But we continued to address it.

We also framed questions, with the assistance of the behavioral science people, to try to determine or elicit from them answers that they might not realize would lend itself to a very probative analysis of what their true mindset was, were their responses terminal, indicating the possibility of suicide, or were they long-term in nature, indicating the possibility of survival. In almost every single instance, their response to specific questions and subtle questions were survival oriented.

We felt very confident, probably too confident that these people did not intend to exercise an option of a mass suicide, and we moved forward with efforts along those lines.

I will turn it over to Mr. Jamar.

Mr JAMAR. Mr. Condit, to answer your question on the planning for the possibility of fire, part of our operations plan, which was very comprehensive—I think you have access to a copy of it—part of it was local emergency medical service and to include local ambulances that we could bring in to help us. We brought in a lot of our own helicopters and everything else.

But part of the concern was fire suppression. The No. 1 first department was Bellmead, actually, not Waco. We had Bellmead Fire Department. The primary responder, which we had a minimum response time of one unit in 8 minutes, two units in 12 minutes.

Waco Fire Department—there is a description of the several units here—the response time a minimum of two pumper trucks within 10 minutes. We had that access to us right there. We did not have firetrucks at the site, because we viewed fire as a possibility. The references you cited, theological and others, there were direct references, but not as many as portrayed by witnesses I think in the past here.

I think it was a possibility, hardly a probability. There was a lot of reason not to bring the firetrucks. One is operational security, but the other is what occurred, is when the fire did start and the firetrucks did arrive, I did not let them in. I held them at the check point, because I did not want the firemen to drive into gunfire. I just was not going to permit it. It is a terrible thing and a very terrible decision to have to make, but it did not take me 2 seconds to make it. But we held the firetrucks. So that was our fire planning.

Mr. NOESNER. Mr. Condit, could I add to that?

Mr. CONDIT. Yes, sir, absolutely.

Mr. JAMAR. Day in and day out, David Koresh preached an apocalyptic theology, so fire and brimstone was a regular part of his dialog. So it is hard to discern is this his general theological approach to the end of the world or is he specifically talking about a fire. While we never trusted it one way or the other, the remedy we chose to deal with it, as Mr. Sage suggested, we confronted them time and again what their intentions were. But at no time did he specifically say we are going to start this place on fire.

Mr. CONDIT. I understand that. Was there any concern or consideration given to using a suppressant like avalon or something, making that available? Do you know what I am talking about? It is a fire suppressant.

Mr. JAMAR. How do you deliver it?

Mr. CONDIT. Well, they have a way of doing it in other places on ships and things, but apparently you did not, that was not a consideration that you——

Mr. JAMAR. The problem is the same with any delivery system, is the same as the firemen.

Mr. CONDIT. You just could not bring it in because of the safety of the firetrucks.

Mr. JAMAR. Right.

Mr. CONDIT. Thank you very much. Whatever little time I have left I would like to yield to my colleague from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Condit.

I think you were dealing with a well armed barricade maniacal messianic well-farmed child molester when you got there who was controlling a bunch of people within the compound, and what you faced was very difficult and I think you did it your best, I am convinced, to save children in a decent way.

I am interested—and I do not know if you can answer this question or not, but I have asked a number of other people and no one seems to know the answer. I think key to dealing with a cult of this nature is early intervention before things get so out of hand. One of the incidents that I am very interested in why nothing hap-

pened—and maybe you can tell me or did something fall through the cracks or why this would happen.

In the summer of 1990, when the cult was in LaVerne, CA, the LaVerne police were called when the son of a cult member, Robin Bun, was kidnapped by a Koresh follower to Texas, and the police—and this is well documented in our material—the police gave Koresh 48 hours to return this little boy who was then returned.

However, at the same time Ms. Bun, who had left the cult, told the police—and they were able to verify it—that Koresh had been taking very young girls below the age of consent as his wives, one of whom was a 14-year-old girl from Australia. It did not appear from the record that she had an adequate visa.

When they returned, Koresh had taken this 14-year-old girl as his wife to Texas, and I have wondered throughout how come—I mean that is transporting a child across State lines to have sex with her and that is a problem. Why did something not happen then before this cult grew and things got out of hand? Why did not the FBI go after him for child molesting? Why did not the LaVerne—or maybe they did. Does anybody know the answer to that?

Mr. JAMAR. Well, I think the events that you described I am not sure the FBI would have been made aware of it. I do not think the statute you cite is utilized except in instances where there is a kidnapping or there is a complaint, a family complaint. I think the family agreed to let their daughter marry Koresh. If we are talking about Rachel, I presume that is who you are talking about, his wife Rachel.

In that type of instance where young girls are taken into prostitution even, among the priorities and investigations and prosecutions in Federal courts, isolated cases of nonkidnapping, nonheavily abused children being taken for prostitution do not really make it up to the top of the surface, sadly. I think when you go home tonight, you drive out and you drive in certain parts of this city or any major city in the United States, you are going to see children on the street for various reasons. I think you are talking intervention. The intervention is 10 years too late. It is sad, and I think this is just one more instance of children and young people just falling through the cracks of society.

Ms. LOFGREN. So maybe we would be better off putting some more resources there early on, rather than later in a lot of instances.

Thank you.

Mr. MCCOLLUM. Mr. Condit's time has expired.

I now recognize for 5 minutes Mr. Ehrlich.

Mr. EHRLICH. I will be glad to yield my time to my friend and colleague Mr. Bryant.

Mr. BRYANT of Tennessee. Thank you, Mr. Ehrlich.

Gentlemen, thank you for appearing today. As a former U.S. attorney, I certainly want to recognize all Federal law enforcement and make it clear that this entire panel does not mean these hearings are a blanket indictment against Federal law enforcement officials, and we have a great deal of respect for all of you. However, it is our duty as the Congress to exercise oversight over the FBI and the ATF. Certainly, it is our job to Monday-morning quarter-

back in certain instances, realizing we were not out there having to make the decisions at that point.

With that editorializing over, I wanted to ask Mr. Smerick: You had commented earlier in regards to your fifth report, you had given four reports, in essence, cautioning a conservative approach to this. The fifth report apparently was a change in policy in terms more of a confrontational approach. You said you did that maybe subliminally or whatever, but you felt pressure. Who was the gentleman that asked you or made this comment to you about this? Did you say John Douglas?

Mr. SMERICK. John Douglas, my unit chief of the Investigative Support Unit of the National Center for the Analysis of Violent Crime.

Mr. BRYANT of Tennessee. He is the chief and he is your direct supervisor, your boss?

Mr. SMERICK. He was at the time. He has since retired.

Mr. BRYANT of Tennessee. Did he say that the Attorney General was not happy with the tone, the tenor and tone of your report?

Mr. SMERICK. No, sir, nothing like that at all. He just indicated that he felt that superiors at FBIHQ felt that by recommending as much caution as I was, we were tying the hands of the FBI from taking any type of action. I am not talking in terms of using CS gas or attacking the compound or anything like that. As was discussed earlier, there is a difference in philosophy regarding tactics that can be used in a situation like this.

So where I might be on the side in this particular situation of the negotiators and say talk, talk, talk, perhaps the tactical side or the commanders may feel we need a little bit more pressure, a little bit more stress on the situation, such as shutting off the electricity, and so it is a degree of difference here.

Mr. BRYANT of Tennessee. I may have misunderstood you, but I thought in your first testimony you did mention specifically that the Attorney General was unhappy.

Mr. SMERICK. No, sir, not the Attorney General.

Mr. BRYANT of Tennessee. I know the record will show that.

Mr. SMERICK. It was Director Sessions.

Mr. BRYANT of Tennessee. Director Sessions was not happy with that?

Mr. SMERICK. That is what John Douglas reported to me yes.

Mr. BRYANT of Tennessee. Mr. Jamar, let me ask you again to name names for me, as I want to ask the questions. In the context of you being the field supervisor in Waco in charge of what was going on and Washington, who made the decision to use CS gas? That came from Washington, or was it at your recommendation? Without a great deal of reasoning why, but what was the flow on that?

Mr. JAMAR. The operations plan we submitted on March 27 was the plan, and modifications became the April 19. However, we did an emergency plan the first week we were there in case we detected something like let us kill five children and show them we mean business or let us start doing—there was a lot going on inside there. When the few options we have nonlethal to try to stop some kind of conduct like that is gas, but the gas that was recommended to us from the start and the gas the FBI has used and

the Los Angeles Police Department has used, and I think—I do not know what law enforcement that does not use CS gas—that was just that.

Mr. BRYANT of Tennessee. But the decision to use gas at Waco, was it a decision that was——

Mr. JAMAR. It was part of our operations plan that I recommended.

Mr. BRYANT of Tennessee. And that went up to Washington?

Mr. JAMAR. Yes, sir.

Mr. BRYANT of Tennessee. And then they approved it and approval came down?

Mr. JAMAR. Correct.

Mr. BRYANT of Tennessee. Now, the same question in terms of that particular day, because I am still intrigued as to what reason compelled you actually to go on April 19. What reason was there and, again, what was the flow up or down on that decision to go on that particular day?

Mr. JAMAR. Let us go forward to where the operations plan by the FBI is—we are all in agreement now. That took several days and it was presented to the Attorney General. The Attorney General is considering this plan. The conditions and circumstances which led to the recommendation, which would have been late March, had not changed.

Nothing had changed during that period of time that made us recommend it. We did not sit still. You have heard what we did during that period of time to include all negotiations with lawyers and everything else. But the circumstances remained the same. The motivating factor to me during that time was the danger that I tried to describe earlier.

Mr. BRYANT of Tennessee. The danger to the children?

Mr. JAMAR. The increasing danger overall to everyone in the place. As time passed, the possibility of a breakout increased every day, and there were plenty of other dangers, too. But those circumstances were the same. When I was notified on the evening of the 17th that the plan had been approved by the Attorney General, the first thing I did was check the weather, because we had spent 51 days there in rain and Texas thunderstorms that were horrendous, and the weather was good. The weather was probably the primary factor for me, was that it was clear, it was going to be clear, but nothing had changed. Not one thing had changed since that period, during that period of time.

Mr. BRYANT of Tennessee. Could I interrupt you real quick?

Mr. JAMAR. Sure.

Mr. BRYANT of Tennessee. Mr. Sage, can you answer this? Was there any obligation—and maybe you did this—on your part to give the compound warning right before this raid occurred, that there is going to be gas injected and if the children are going to leave, they had better leave in the next 15 minutes? Did you do that, or was there any obligation to do that?

Mr. SAGE. It was my instruction on the evening before, we had prepared a specific list of issues that I was to present to the compound, both over the phone, if we had that option, and simultaneously over the PA system, and that in fact was done. I called in at 5:59. Steve Schneider was on the phone shortly thereafter. I just

began to get into that particular issue, whereupon he hung up. The microphones indicate two things. They immediately donned gasmasks and they immediately began to spread fuel.

I continued with the broadcasts then for the rest of the morning for 6 solid hours, advising them that we were in the process of delivering gas. My understanding is that nearly 10 minutes passed, that the first CEV was in the process of approaching the compound. They had plenty of time to have at least started. All they needed to do—and this was my understanding all along—all they needed to do was send us some sort of signal, any kind of signal that they were prepared to begin a safe and orderly evacuation, and the whole thing would have come to all stop and we would have facilitated them coming out.

Mr. McCOLLUM. Mr. Bryant, your time is up.

We are at the point now where we have four or five votes in a row on the floor, gentlemen. They are 5-minute votes, so we should be back here fairly shortly to complete your testimony.

I will now have the subcommittees in recess until 5 minutes after the last of a series of votes. The subcommittees are in recess.

[Recess.]

Mr. McCOLLUM. The joint subcommittees on the Waco hearing matter will come to order.

When we recessed a few minutes ago, we were at the point where it was Mr. Brewster's opportunity to question, and I will recognize you for 5 minutes, Mr. Brewster.

Mr. BREWSTER. Thank you, Mr. Chairman.

Mr. Jamar, I know that you did not create the incident in Waco, that your group was called in to try to bring some resolution to it at a later time. Several questions along with that, when was the plan set up and the date of April 19 set as termination point?

Mr. JAMAR. The plan was submitted first in late March, given to the Attorney General and discussion within the FBI. She approved the plan on April 17.

Mr. BREWSTER. The plan of the 19th being the termination date?

Mr. JAMAR. I am sorry, the plan was performed on the 19th, and she approved the 17th, yes.

Mr. BREWSTER. The plan to execute on the 19th was approved on the 17th?

Mr. JAMAR. Yes.

Mr. BREWSTER. So really the negotiations did not play a lot of part in the last couple of days, is that correct?

Mr. JAMAR. It played a great part. I think had Koresh had a different attitude, had we had any signal of a change, we would not have gone in on the 19th.

Mr. BREWSTER. I read the transcript and he says several times in there that he wants to come, wants to have a shower, wants to do those things once again. I guess most of those things had been said before, is that correct?

Mr. JAMAR. Almost every day.

Mr. BREWSTER. So that was really nothing new?

Mr. JAMAR. No, sir.

Mr. BREWSTER. He also mentions in here that he was getting awful tired of eating the MRE's. I have heard that from the mili-

tary before. How much more food did they have in there? Do you have any idea?

Mr. JAMAR. I think the estimate was, when observed, at least 2 more years.

Mr. BREWSTER. They were eating about 6,000 meals a month, so that would be—my goodness, then they had 200,000 or 300,000 of the MRE's?

Mr. JAMAR. There were not only MRE's. I think the figure I saw was 50,000 MRE's they had purchased.

Mr. BREWSTER. Fifty thousand MRE's?

Mr. JAMAR. Is that not right?

Mr. SAGE. Over a ton of potatoes.

Mr. JAMAR. A ton of potatoes. They had all kinds of cans of vegetables and fruit.

Mr. BREWSTER. Along that same line, I know some of the people were suggesting, Mr. Smerick I think at one point suggested that maybe pressure was not the right thing, that these people could be suicidal. I think back in early March, like the 8th, 9th, or 10th, somewhere along there, you had several of those. I know you had to make a decision on what you thought was the best outcome and did not choose to go that way.

But in looking at the way pressure was applied—and I heard rumors that cannot be true surely—did you in fact play tapes or rabbits being slaughtered?

Mr. JAMAR. I think among the sounds and everything that was played, that began March 22, not back the first week in March, March 22. I think among that was all sorts of sounds. I think rabbits was one of the things that the media reported.

Mr. BREWSTER. And for what length of time?

Mr. JAMAR. I do not know. It was such a mix, it probably was not done very often. There was a person in Houston that provided us this library of tapes and sounds designed for this sort of thing, and there were all sorts of sounds.

Mr. BREWSTER. Well, as one who is a varmint hunter, a predator call is about the eeriest thing I have ever heard and I was kind of curious if that was really true.

Tell me, what would have been lost by waiting another 10, 20 or 60 days to do the execution of the final plan?

Mr. JAMAR. I think the thing that I hope I can get across that is most important in that regard is that once we decided that we would recommend that we do the plan that became the plan of April 19, that the fear we had all along was a breakout.

As time passed, it was going to get to the point where—and his action on the 19th removes any doubt in my mind about this—that he would decide when it would happen, and how would we stop him, what would we do to stop him from doing either a mass suicide inside by poison or whatever he was going to do, shooting people, a fire, a breakout with a child, whatever that might have been, he would dictate when that occurred. How would we stop him? What could we do not only without gunning everybody down or entering the place and killing a bunch of people to stop him? Well, it is gas, CS gas.

So what we wanted to do was do it on our schedule as best we can. Now, we would not have done it at all, with any inkling of any

change. But we wanted to do it on our schedule. We did not want him doing it at 1 o'clock in the morning and we are not prepared. So as time passed, the possibility of that, with him making sure that his prophecy came true, it was going to be more and more possible to occur. So the longer we waited, the more apt that was to occur.

Mr. BREWSTER. So you waited 51 days, and had you waited another 20 or 60 days, you think in your mind there is a good possibility he would have tried to break out, so to speak?

Mr. JAMAR. The possibility was there. My point to you is that the ending was going to be the same. He was going to have that ending, no matter what. Now, could we have gotten a few more people out if they became ill or if he wanted to expel them or negotiate them out? That was a possibility, I do not think there is any question about that. But the end, he was going to have that end in one manner or another, I firmly believe that.

Mr. BREWSTER. In yesterday's testimony, we had a group that I personally think, having lived in Texas a number of years, one of the more professional groups I know, the Texas Rangers, they were very unhappy with the treatment they received from the FBI down there.

Mr. JAMAR. I think to me it sounded more like just the—it sounded like I am the one that they correctly had complaints about.

Mr. BREWSTER. Did you realize that at the time?

Mr. JAMAR. No, I did not. I heard that they were concerned about they had to wait for me. I think it was during the first week.

Mr. BREWSTER. And sometimes never got to meet with you at all.

Mr. JAMAR. Well, I think probably that first week we were so running around all over the place and everything, I think that we got off on the wrong foot. When I learned that, when I discovered—because I thought we had agents over there all the time, I thought it was OK—when I learned that, I went to see Captain Burns and I apologized and tried to rebuild it.

But the problem was—and this is an absolute legitimate complaint on their part—here they were asked to come into a Federal matter, one of the biggest disasters in law enforcement history and investigate the homicide. And they run into me and I am constantly undermining their case.

Mr. BREWSTER. Will not let them check the footprints and check the cars.

Mr. JAMAR. No, that is not so.

Mr. BREWSTER. That is not so?

Mr. JAMAR. No, I think it was circumstances that kept that, the rain and what was going on with the compound. I never did that. I never said you cannot do that. I think they just misunderstood why we did not get them out there when they wanted to go.

But their complaint about me just taking the evidence away and letting the lawyers go in is an absolutely legitimate complaint on their part. It was terribly frustrating for them. It was terribly frustrating for the prosecutors. They were not real happy about it, either.

Mr. BREWSTER. One other question——

Mr. McCOLLUM. Mr. Brewster, your time unfortunately has expired. I let you go a little while here, but I have to put you in check, I am sorry.

Mr. BREWSTER. Thank you, Mr. Chairman.

Mr. McCOLLUM. Mr. Hyde, you are recognized for 5 minutes.

Mr. HYDE. Thank you, Mr. Chairman. I am pleased to yield my 5 minutes to you.

Mr. McCOLLUM. Thank you very much, Mr. Hyde, for yielding.

Mr. Jamar, I want to follow up on a couple of questions, one of them being the sanitation question inside the compound during the time of the siege and leading up to the April 19 date. You have indicated that it was less than what you would find on the outside.

I assume you were referring to things such as the fact that I do not believe they had any toilets in there and that sort of thing. Could you tell me what the sanitary condition problems were as you perceived them. What were the conditions inside in general terms, and what might have been different about that from perhaps what was the case before the siege began?

Mr. JAMAR. Let us start with the conditions as we understood them before the siege, that women and children were allowed to use toss-pots, men were allowed to go out into the equivalent of an outhouse, so whatever would be accumulated during the day would be tossed out at the end of the day.

There was one spigot of water in the entire building. They had water tanks that would be in the lower right-hand side—you cannot see them there, but right behind—see where the fence comes out in loops? They are inside the compound, white plastic water tanks. They had a well, an electric well, a 600-foot deep well, and there was one spigot from those water tanks, a drip spigot into the place. That was it. That is all the plumbing they had operating.

So when the siege began, they could not get rid of all of that as they used to. There was a huge sewage field out to the right, would be what we call the red side. That was about 30 yards out or maybe not that far, maybe 60 feet out was the sewage field. When the agents put the concertina wire, they were knee-deep in sewage. They were dumping it out there, and behind the place was a sewage field.

Mr. McCOLLUM. So they could not go out there and dump it while the siege was going on?

Mr. JAMAR. Well, they dumped it anyway, but they ended up dumping it all into the side to the left covered by tarpaper there.

Mr. McCOLLUM. Yes sir.

Mr. JAMAR. That was filled with human waste on April 19 when the agents went in, which you will hear about later.

Mr. McCOLLUM. So that is the difference in the conditions, they were not able to go to out as far away as they would to dump it.

Mr. JAMAR. Right.

Mr. McCOLLUM. But the conditions as far as not having running water or plumbing were that way for a year or more before this happened?

Mr. JAMAR. Yes, sir. The other thing we did, we asked for a tape of the children, so we had forced them to clean the children because we knew they would not send a tape out with dirty children.

It was of us finding out about the water, but they had plenty of water.

We thought they had a water shortage, because when Branch and Whitecliff came out, they were dehydrated, but that was a disciplinary action by Koresh.

Mr. McCollum. So it really was not a water shortage.

Mr. Jamar. No.

Mr. McCollum. The point is that the only difference in the conditions, though they were certainly far from ideal, as before the siege, during the siege and at the end of it was this question of where they dumped the sewage and how close it was in its ultimate accumulation. I presume you assumed that would ultimately become a problem at any given time, but you were not sure when.

Mr. Jamar. But they had dead bodies in there, too.

Mr. McCollum. But so far as we know, no disease had occurred as a result of that, no illnesses particularly that you were able to detect, is that right?

Mr. Jamar. We were frightened of TB and we had everybody who was there inoculated for TB, but there was no confirmed cases.

Mr. McCollum. But you had no manifestation of it at the time?

Mr. Jamar. No, sir, it was a fear of it.

Mr. McCollum. Now, I want to get back to the question, Mr. Sage, of your conversation with Mr. Hubbell in which you were responding to Mr. Shadegg concerning the issue of what you may have told him on the April 15 during that 2-hour telephone conversation regarding the DeGuerin breakthrough issue.

Let me frame for a minute the question I am going to ask you, and I would like maybe Mr. Jamar to respond in the generic, too, so I will ask you both to listen to this. From yesterday's testimony, both by DeGuerin, Zimmermann, and Mr. Tabor, as well, and perhaps Dr. Arnold, it is my impression that they believed that by April 14 or 15, I guess it is the 14th, there was a difference in Koresh's attitude, that he had looked at things differently, that he was not now looking at becoming a martyr.

They believed, and I think they were sincere in this belief, that at that point he had switched and they had been able to convince him to switch his thinking to the fact that, instead of God wanting him to be the martyr and the Messiah idea of coming out, that he was going to be the messenger under his interpretation of the seals and the Book of Revelation, and that by writing down these interpretations of the seals he would be able to come out and publish them, even though he might be in jail, he would be able to produce these things in some way and he would be able to fulfill that particular mission, as opposed to martyrdom.

Now, they seemed very genuine in that conclusion, and I assume I am correct that that was the basis of what was "new" on April 14 about this. The seals themselves and the fact he wanted to interpret the seals was not new, but their perception of his changed attitude, at least they were conveying that to you was new. Am I correct in that? Is that the way that you read it?

Mr. Sage. I think they absolutely believed that. I think they were as deceived on April 15 by Koresh in this particular venture as we were, as I was on March 2.

Mr. McCOLLUM. But my point is, just for the record, that was your impression and I have got that down as well as theirs, that this is what DeGuerin was looking at, and what he was thinking and what his impression was and yours was. Now, whether you thought they were deceived or not, is another story.

My question is this new idea of DeGuerin, deceived or otherwise, was that new development, if you will, that DeGuerin thought he had obtained Koresh's state of mind being different and the interpretations being written down and this change from desire to be a martyr, was this aspect of DeGuerin's interpretation and Tabor's interpretation of it, was that conveyed by you in that telephone conversation with Mr. Hubbell?

It seemed to me that you were saying that you thought perhaps that the discussions with DeGuerin took place after the Hubbell conversation. If it was not conveyed during the Hubbell conversation on April 15 did you ever convey that, or did Mr. Jamar ever convey this to Mr. Hubbell or personally, as opposed to up the chain of command through written form or whatever to anybody in Washington at the Justice Department or to Mr. Hubbell or anybody in the White House before the 19th?

Mr. SAGE. My recollection is that I gave a very general overview as to the dynamics of negotiations since the first day, since I was the only one there that had been there the entire time. I gave them direct candid insight as to what my observations were as to the success to date or failure of negotiated efforts and as straightforward a consensus from the negotiation team as to what the possibility was of a successful resolution.

I would like to mention this: I was surprised that I was to talk to Mr. Hubbell. When I responded to Waco from the very beginning, it was not in the form of being in a supervisory role or anything else. It was to be a negotiator in the trench, and that is exactly where I was the entire time.

In hindsight, I would consider it to have been very commendable for them to have sought out not only the opinion of the onscene commander or the command level personnel, but also the specific frank insights of those individuals that were there in the trenches where it was going on, to insure that they were getting an accurate representation of the dynamics of what was going on. That is exactly what I attempted to do.

Mr. McCOLLUM. But the question you have not answered is, and I just want the answer to my question, is did you convey this new idea from DeGuerin explicitly to Hubbell or on another occasion to anyone else in the Justice Department or in the White House, you personally by telephone or in person, between the time you got that information on April 14, on or about that date, and the date of the ultimate assault?

Mr. SAGE. The answer to that, the best of my recollection, is that on April 15, this first of all was not a new revelation to us as far as the Seven Seals. I have mentioned that previously.

Mr. McCOLLUM. I know, but the other aspect was——

Mr. JAMAR. Mr. Chairman, I think I can clarify it.

Mr. McCOLLUM. You can, but let Mr. Sage finish first, please.

Mr. SAGE. We were still in the process of trying to determine through negotiation process the veracity of the offer that had been

laid forward. To specifically answer your question, I do not remember addressing in any detail the dynamics of that, because it had not unfolded yet. It had not unfolded yet. We did not know the veracity of his offer, whether or not he had followed through. Ultimately, he did not.

Mr. MCCOLLUM. So your answer is you personally did not convey it explicitly?

Mr. SAGE. Not that I recall on April 15 or any time thereafter.

Mr. MCCOLLUM. Mr. Jamar.

Mr. JAMAR. Mr. Chairman, previously I was not certain whether it had been conveyed to the Attorney General. I have since been told that she was made aware of it and, among other things, it is the reason she asked Mr. Hubbell to call out and talk to a negotiator, is what does this mean to the negotiations. To satisfy her before she made a decision, she asked Mr. Hubbell to call a negotiator. When they called out they said that someone from the Attorney General's Office wanted to talk to a negotiator. I selected Mr. Sage because he had been there from the very beginning and had the best feel.

Mr. MCCOLLUM. Mr. Jamar, the question was not whether you have been told the Attorney General knew about it. We will find that out down the road and confirm it or deny it. The question is did you yourself, or do you know anybody on your team, who personally told Mr. Hubbell or anybody else in Washington in the Attorney General's Office, the Justice Department, in other words, or the White House after that information on April 14 came into being, before the assault?

Mr. JAMAR. My previous testimony was that I presume that it had been done. I could not cite how and who.

Mr. MCCOLLUM. But you did not personally do it?

Mr. JAMAR. No, sir.

Mr. MCCOLLUM. That is all I wanted to know. And you do not know how or who?

Mr. JAMAR. But it was accomplished.

Mr. MCCOLLUM. Mr. Lantos.

Mr. LANTOS. Thank you, Mr. Chairman.

We have been inundated in the last few days with countless detailed questions and detailed answers. What I would like to do with you gentlemen is to ask you to sit back, take a deep breath and look at the broad picture.

There have been basically three kinds of approaches to this tragedy. One approach, this is the approach of what I call the lunatic fringe, still clings to the notion that there was as gigantic governmental conspiracy that brought about this nightmare. It is difficult to see how any rational human being subscribes to such a notion, but obviously many do.

The second broad area where most are relates to the kind and nature and level of mistakes made by various governmental authorities along the way, and I suspect we can debate ad nauseam and ad infinitum the specifics of the mistakes, and that is not my intention.

But the third arena in approaching this tragedy is the one that I think has received the least attention so far, which to me is in-

triguing, because in many ways I think the answer is to be found in the third arena.

The only analogy we have to this episode in American history, certainly in recent American history, is the tragedy in Jonestown, Guyana, where you had a charismatic criminal who had an apocalyptic vision and who brought about the death under the most nightmarish circumstances of about 900 American citizens. There was no FBI, there was no ATF, there was no Justice Department, none of the conspiracy theories could work. There was really no question about mistakes being made by our law enforcement agencies, because they were basically not there.

Yet, 900 American citizens under the spell of a criminally insane charismatic cult leader lost their lives. They were either killed or they committed suicide or they were forced to commit suicide.

What I would like to ask each of you—and each of you is an expert, because you have been dealing with this issue—is not to worry about the details now. We have spent plenty of time on that, perhaps more than this committee should have. But I want you to look at the broad picture, and beginning with you, Mr. Jamar, I want you to tell me whether you see any analogy between the Jonestown nightmare, whether this at any time during this process crossed your mind consciously, subconsciously, as you think back at this whole horrible episode in your life. Do you feel that you may have been influenced by what you remember happened at Jonestown?

Mr. JAMAR. I was asked the question in a media briefing on April 20, 1993, was this another Jonestown, and my answer was it is, if you look at it as a charismatic leader causing the death of all of his followers.

Our fear all along was that Koresh would find a way to make those people die in his name, in his glory, and he would survive. That was my greatest fear, not that it makes a difference whether he died or not. It is just that he was so concerned about himself. One of the descriptions of him as a psychopathic personality is that he is not really interested in dying for any cause, including his own.

Mr. LANTOS. If I may interrupt you, so you reject the notion that one of my colleagues introduced yesterday and had a dialog with the defense attorneys that if rational people had just waited 10 days, everything would have been all right?

Mr. JAMAR. Well, as I said earlier, I think that he was going to find this end, those people are going to die in his name and with him or without him.

Mr. LANTOS. Right.

Mr. JAMAR. One day or another, whether 10 days or a year later, I am convinced of that ending. Still I would have waited a year if we had something to work with, if there was just something there we could attach something to. We did it from February 28 until a decision was made in late March that we thought we were going nowhere, and we were afraid he was going to dictate when he was going to cause it, and we could not prevent it as easy as we could have otherwise. That is a long time.

We did a lot and we did more even after that. But I am convinced that he was going to end it his way. He controlled events

from February 28, he controlled events with us March 2, and I do not think there is an event that he did not control, other than the weather, maybe.

Mr. LANTOS. So you see an analogy with Jonestown?

Mr. JAMAR. Yes, sir.

Mr. LANTOS. Could I ask the rest of you gentlemen to respond.

Mr. NOESNER. During the negotiation process, we mentioned Jonestown many times. It was on our minds and we were certainly aware that this might be a precedent for Mr. Koresh.

I think it is important that this committee examines what we did in law enforcement and to determine how we can improve in the future. I for one did not agree with every decision out there, and we have learned from that and we have taken corrective actions in the FBI.

But there is one thing I have to tell you, having spent so much of my career in the field of negotiations. There are no guarantees. I could talk to 38 people wanting to commit suicide today and we could probably convince 36 or 37 of them not to do it. But the other handful of them will do it, regardless of what we do, and that is because of what is going on in their mind and what is in their own sense, their own self-interest, and that was David Koresh.

We can never say he might not have changed his mind later on. But if there is anything that we could have done that would have guaranteed that we would have had the outcome we would have liked, the answer is absolutely night. There is no guarantee in this business. We are all upset and terribly devastated by the outcome. This is not the outcome that any of us in the FBI wanted, by any stretch of the imagination.

But to suggest that we will always now have an opportunity to be 100 percent successful with the David Koreshes of the world is simply not going to happen.

Mr. LANTOS. Mr. McCarthy.

Mr. MCCARTHY. I would comment that there is a parallel certainly, both cults, both suicidal, and we know that from what occurred. I would also add that a brave Congressman flew there to confront Jim Jones in Guyana and was murdered on the airstrip.

Mr. LANTOS. That is right.

Mr. MCCARTHY. One might offer then that had he not confronted Jim Jones in an effort to resolve that incident in Jonestown, that 900 people would not be dead. I think that would be just as unfair as saying that the FBI is responsible for the death of the children. That is bizarre.

Mr. LANTOS. I fully agree with you.

Gentlemen, could you comment?

Mr. CAVANAUGH. Congressman, Churchill said there is no risk-free battles, and in law enforcement there is no risk-free decisions.

Prior to the ATF raid, I strongly recommended that we negotiate this situation. I believe that today and I believed it prior. So from the ATF's standpoint, if we were ever to confront a situation like this again, we would negotiate from the very beginning, and I believe that that was an error. So, the Director feels along with me very strongly that we have to strengthen our negotiation capabilities to be able to deal with these violent groups. It was a terrible tragedy.

I do agree that when Congressman Ryan was killed and those three aides, it was very similar. In our planning prior to the ATF raid, it was discussed frequently. We used the word Jonestown, Jonestown, that is what is going to happen. And one of the things we faced, if we surround the place and they all commit suicide, all the critics will be out saying why did you surround the place, did you not think of Jonestown?

Mr. LANTOS. Absolutely. Mr. Smerick.

Mr. SMERICK. In these types of situations, there are several dynamics. One, of course, you have to have a charismatic leader. But, number two, you have to have people who are willing to follow this individual. Normally, these types of individuals are looking for someone in life that they can turn over all of their responsibilities to. So in this particular event, you have people not only giving up their homes, giving up their possessions, giving up their material wealth, but giving up their freedom for the belief in this one individual.

It went so far as to giving up sexual relations with their spouses, and the ultimate act of power and control is turning over your own children to an individual like David Koresh.

Mr. LANTOS. So you see a parallel between——

Mr. SMERICK. I see a parallel between the two. It really comes down from a behavioral perspective of being power and control. Every charismatic leader that I have encountered, that is the main issue.

Mr. LANTOS. Mr. Sage.

Mr. SAGE. I would basically adopt the comments of the rest of the panel and just state that I was not in Jonestown. I was at Mount Carmel. I will never forget it. This individual was an absolute master of deception, and to embrace some of the concepts set forth yesterday will be to enable Koresh to continue this pattern of deception on these subcommittees.

Mr. LANTOS. I want to thank all of you for your advice. Thank you very much.

Mr. MCCOLLUM. Mr. Lantos, your time is up.

The subcommittees will be in recess until after the vote that is now pending.

[Recess.]

Mr. MCCOLLUM. If we can have the witnesses back at the table, the subcommittees will come to order.

When we recessed, it was time for the Republican side of the aisle, but the Democrats have gotten back here sooner. Mr. Conyers is sitting there with his time and I am going to give you your 5 minutes now, Mr. Conyers.

Mr. CONYERS. Thank you very much, Mr. Chairman.

I would like to talk with Mr. Cavanaugh.

Mr. MCCOLLUM. He is entering the room right now. We are not going to run your clock. We will turn it off until Mr. Cavanaugh gets seated and everybody is ready to go.

Mr. CONYERS. Did you notice I did not even make any requests for additional time, because I knew the chairman's fairness would cover us.

Mr. MCCOLLUM. I appreciate that, Mr. Conyers. I think we have got Mr. Cavanaugh seated. Mr. McCarthy still has not entered the

room, but you do not need him right now for your questions, is that right?

Mr. CONYERS. I would like to begin my discussion with Mr. Cavanaugh.

Mr. MCCOLLUM. Very well, please proceed. You are recognized.

Mr. CONYERS. Sir, you were in a unique role in this episode that is being relived many, many times here in the hearing room. You were both a commander and a negotiator and, as such, you played a key role in each capacity, and I congratulate you for your very important performance in both areas.

One thing that has been said in terms of negotiation is, of course, we were dealing with a religion that was unique and not popularly understood, and it has been gone over time and time again, we have to understand from their point of view, and so forth. Was that something difficult for you or the other negotiators to understand?

In other words, it seems to me a little simplistic for us to say, well, you have got to take into consideration that these were Davidians and they believed in other things. How could one not do that? What else would you be thinking of? These are not hard-shell Baptists, these are not Catholics, these are not—they are who they are. To what degree, Mr. Cavanaugh, was that understood by yourself and others that participated in the negotiation process with you?

Mr. CAVANAUGH. Congressman, I fully respected their religious beliefs, whatever degree there was of religious beliefs. I think all the other negotiators did, also. I do not mean to be sarcastic, but my feeling was they can worship a golden chicken if they want to, but they cannot have submachineguns and handgrenades and shoot Federal agents.

I played the role as a policeman. That is what I am. I did not try to fool the Davidians that I was something else. I think that is one reason that Koresh certainly trusted me from the beginning. I did not try to fool Koresh or trick him. I simply said, look, I am a policeman, we want to resolve this situation, our shared problem is this conflict, let us see if we can work it out. I think every negotiator that followed me took the same track.

Normal strategy in a negotiation—like I say, Congressman, I am a rookie at this and the experts are on my left—I think any policeman, any special agent respects the sanctity of life, and I certainly respected the sanctity of Mr. Koresh's life. It was difficult for me, because I had watched him kill four agents and shoot 20 others. That made it difficult for me.

Mr. CONYERS. I want to tell you that our staff studies that I have gone over recognize that you treated your negotiating role with patience and good listening skills, and that your training as a negotiator held you in good stead.

Now let me turn to your other role as a law enforcement commander, in which you spent a considerable amount of time and hours trying to rescue Special Agent King who was caught in a crossfire, and there was apparently some difficulty in getting to him. Would you recapitulate that for us, Mr. Cavanaugh?

Mr. CAVANAUGH. Yes, Congressman. I think it is important to know, because some of the facts that have come out in the other areas may be cleared up here. If you look at that chart, the roof

of the chapel is on the right side, the centerline up and down, and that is the window just on the right where everybody has watched on TV the three agents go in. Kenny King went over the peak of that roof to the window on the left.

Mr. CONYERS. Could you show us where it is? I am not sure if I am following you.

Mr. CAVANAUGH. The New Orleans team put their ladders here. This is the window that is always shown on television. Kenny King and Antoine McKeehan went to this window. Conway LeBleu was on this ladder. A lot of the rounds that were fired through the roof of the Davidians' own place were fired from this tower. There Agents King and McKeehan and Conway LeBleu caught rounds from the tower through this roof that we have heard attorneys discuss, the rounds down through the roof. And there were rounds up through the chapel roof, because they heard the agents up there.

Bill Buford could testify because he was wounded inside this room from rounds being shot up. Those rounds had missed him and come out this roof. And the agents on the ground here were shooting up this way at this roof. So I just wanted to mention that. But Kenny King fell off here and he fell in this alcove and we had no man. This was the first extent of our team right here.

Mr. CONYERS. Now, you were trying to reach King who was indicating that he was seriously injured.

Mr. CAVANAUGH. Yes, sir.

Mr. CONYERS. Were you trying to get the Davidians to hold their fire, or what were you doing during that time, and how was King ultimately rescued?

Mr. CAVANAUGH. One thing, Congressman, we could not reach a cease-fire agreement. The only thing I would impart that is not shown on the videotapes on the television shows is that this was not a gun battle where a few men were on the roof and a few were shot. This was a gun battle where thousands and thousands and thousands and thousands and thousands of rounds were fired. That is the way it was. The shooting I remember did not stop for 40 or 45 minutes, and then when it did stop, it continued sporadically.

Small skirmishes would break out of a few hundred rounds. During the negotiations to get a cease-fire, this same thing would frequently happen. The Davidians would fire on someone and we would respond or they would accuse us of firing, and so forth. So the cease-fire initially broke down three times. When we finally reached it, I radioed to Pete Maston who was on the New Orleans side, and I asked him—I told the Davidians we were going to send four agents, they are going to get the wounded men in the back and they are going to stand up, you cannot shoot.

Mr. CONYERS. King.

Mr. CAVANAUGH. Yes, King.

Mr. CONYERS. And he was there caught between this gunfire for what period of time?

Mr. CAVANAUGH. Well, he was shot probably about 10 a.m, and he was there at least for 2 hours when this was going on. He had been shot through the chest, through the bullet-proof vest with a submachine gun and back out the other side.

If you would let me, I would like to mention that all the men who were wounded there and also women, we had six women there, too.

and one got the Medal of Valor. But all the men who were wounded we saved. The only agents who died were those who were killed immediately. We were much criticized for our medical plan. That is atrocious.

We had medics, ATF certified paramedics who treated our wounded on the ground, who gave Bill Buford plasma when he was shot laying there. That is the only reason he is alive. I do not know that there is a law enforcement agency that gives plasma. We went in there trying to be prepared for the worst.

Mr. MCCOLLUM. Mr. Conyers, your time has expired.

Mr. CONYERS. I commend you for the really outstanding services that you performed for your agency and for the men and women that were with you that day.

Thank you very much, Mr. Chairman.

Mr. MCCOLLUM. Mr. Buyer, you are recognized for 5 minutes.

Mr. BUYER. Thank you, Mr. Chairman.

I have got a couple real quick questions and then I have a comment and a series of questions. Mr. Jamar, I was listening to Mr. Brewster's questions to you about some tapes and what they played and what they consisted of. Would you please produce to this committee those tapes either this afternoon or tomorrow? Could you do that for this committee, please?

Mr. JAMAR. I am uncertain which tapes you are talking about.

Mr. BUYER. Were there not some tapes, the kind of tapes that you were playing?

Mr. MCCOLLUM. Would the gentleman clarify? Are we talking about the rabbit tape?

Mr. BUYER. The rabbit tape.

Mr. JAMAR. I am sorry, we will produce them, yes.

Mr. BUYER. Thank you very much.

The other question I have is who do you report to? Do you report to anyone in Washington?

Mr. JAMAR. Do you mean during the crisis?

Mr. BUYER. Yes.

Mr. JAMAR. The person I reported to was Larry Potts, who was Assistant Director of the Criminal Investigative Division at that time.

Mr. BUYER. Thank you. The other thing that has been going through my mind here is several things. First of all, I want to commend all of you for your service to country. A lot of times the military always gets highlighted and sometimes we forget about law enforcement who are on the lines day in and day out for the preservation of our security and economic opportunity here at home. So let me thank you.

Likewise, gentlemen, a lot of times there has been the analogy used quite often with the military style operations when we have our HRT, Hostage Rescue Team, and they are trained in some of the paramilitary style tactics and CQB, close quarter combat training.

In our military, they are trained very well in the MOUT, the Military Operations and Urban Terrain. That is basically they are going to go in in indiscriminate fields of fire, throw the grenade in and kill anything that moves. It only takes a couple days of training. But CQB and laying down discriminate fields of fire are highly

perishable skills and that takes many, many months of training. Agreed?

Mr. JAMAR. Yes, I agree with that.

Mr. BUYER. All right. So when I think about the military aspects of this, and I think some of the military advisers are very cautioned. I think about the military operations, and when we have combat, people die. People are wounded. You in fact have casualties. And a lot of the battles, how awful it would be to bring in a company commander before a congressional hearing when there was loss of life because good men made bad decisions. In battle, good men make bad decisions quite often.

But I want you to know that while I give the military analogy, part of the reason and part of the processes of this is that we are a lawful society, and in a lawful society, as bad as we now know Mr. Koresh in fact to be, the end does not justify the means. That would lead to a lawless society and we do have the constitutional right that you are presumed innocent until proven guilty. We all understand that, and you understand it, because you are on the line day in and day out to preserve the Constitution by your oath, no different than our oath.

Let me ask a question. The other thing that has concerned me, Mr. Sage, is some of your thought processes here. In your April 15 telephone conversation with Mr. Hubbell, in reading the Justice report, it really indicates that you were really getting frustrated here. My reading of this is you were very challenged at the moment, because Hubbell recalls Sage saying he believed there was nothing more he or the negotiators could do to persuade Koresh to release anyone or to come out himself.

Mr. SAGE. I still state that that is slightly overstated, but we had reached an impasse.

Mr. BUYER. You see, that could be part of the problem. I think what I walked away from at yesterday's hearing was that there was as tremendous disconnect perhaps between those of you who were the negotiators in the field and the political appointees in Washington. If you are saying that is an overstatement—are you saying that Assistant Attorney General Hubbell may have overstated and then provided not factual information to the Attorney General that she then used as a basis to make a decision?

Mr. SAGE. I am not speaking for Mr. Hubbell. I am speaking for my recollection of conversation with Mr. Hubbell.

Mr. BUYER. So you disagree with Mr. Hubbell?

Mr. SAGE. At no time did we abandon negotiations.

Mr. BUYER. Then you disagree with Mr. Hubbell's perceptions of the conversation that you had had with him?

Mr. SAGE. I have some concerns about the degree to which it is expressed in that report.

Mr. BUYER. What about the fact that Hubbell—you must have informed Mr. Hubbell that law enforcement personnel at Waco were getting tired and that tempers were fraying.

Mr. SAGE. I do not recall having said that. Our operations are not driven by fatigue or frustration. There is a level of professionalism here that is going to ensure that we give the best possible commitment to a particular set of circumstances.

Mr. BUYER. I understand that, but you also——

Mr. SAGE. If we are not able to perform at that level, then we will replace the person that is there.

Mr. BUYER. I understand that, but also we are in agreement that there are highly perishable skills, and part of those skills also can in fact be negotiating skills. When I say that, as a negotiator—I am not Monday-morning quarterbacking you. I realize your expertise and your intelligence data, but you are also dealing with stress and frustrations.

Mr. SAGE. Certainly.

Mr. BUYER. Trying to put myself in your shoes, I would have some sense of that. Part of my concern here is if we have Mr. Hubbell here on the 15th saying these are my impressions of the 2-hour conversations with you, and then he is having a conversation with the Attorney General, because on April 16 we have the Attorney General basically disapproving the plan to end the standoff. So if on the 16th they were disapproving the plan, to me there is a real problem here. All of a sudden, someone in fact must have tried to convince the Attorney General that we have to go forward. This April 14 meeting, there are tremendous disconnects here.

I know I just ran out of time and I will explore this later, and I am sure I will be able to talk with the Attorney General. I will be happy to talk more about it.

Mr SAGE. I believe I will be on that other panel, as will other participants or at least people that were in the room during the course of that conversation in Waco.

Mr. BUYER. Then we will carry this on further. Thank you.

Mr. MCCOLLUM. Mrs. Thurman, you are now recognized for 5 minutes.

Mrs. THURMAN. There has been some conversation about this letter that was sent, I guess, by Mr. Myron.

Mr. SMERICK. Murray Myron.

Mrs. THURMAN. Yes. Just to clear it up, there was one last—who is he, first of all?

Mr. SMERICK. He is a professor of psycholinguistics, I believe at Syracuse University.

Mrs. THURMAN. Was he involved with this?

Mr. SMERICK. Apparently so.

Mrs. THURMAN. I think Mr. McCollum and one of the others had mentioned, I am not sure who, had talked about this letter, that there might be an ability to work this out or that things had changed on this April 15. However, the letter that I have says, in summary, "I do not believe there is in these writings any better or at least certain hope for an early end to the siege." I just wanted to clear that up and know who this gentleman was.

Yesterday, I asked a question because we, like you, have taken in a lot of information over the last couple of days. And I have to tell you, how you came to these conclusions I am not sure and I want to find that. I have been trying to reconcile in my own mind, based on the information I have heard from Jewell, Sparks, Rodriguez. Then I heard last night from lawyers and theologists, each telling me different things, some telling me they were going to go through the prophecy, some saying there was a possibility we could get out of this.

In your training and through this operation, how did you reconcile all of these different people coming to you with all of these different concerns?

Mr. JAMAR. The analysis by negotiators who were talking to these people constantly, they had a good feel. They understood the people. They were trained to do this, to get a feel for people. I think they were the most reliable among the people who were there among our people as to how reliable, what the people were saying, how much they could rely on what they were saying, how accurate the information was.

We had a lot of people call us offering all sorts of information. We had people decide after each shift what was significant, what happened on whatever the shift was, whatever it happened to be, what happened during this period compared to what we did before, and then analysis maybe of the previous 10 shifts or maybe the previous three days, what has happened, what happened to the recommendations we made or what happened to the conclusions we made, are they still good based on what has occurred. The analysis was constant, because there were constant conversations. These are people who are trained to do this. It was a huge team.

Byron coordinated one shift, Gary was overseeing the whole thing for several weeks, and they had 10 and 12 people working each shift supporting each other. We had a primary person talking, but everyone else was absorbing what was going on and helping them and pushing them to ask questions or interpreting what was going on. At the same time, another person was writing down highlights of what was going on.

So all these people, to include behavioralists and everybody else, were absorbing this. It was constantly reassessed and reanalyzed over and over again.

Mr. NOESNER. If I can respond to that, there were a great many people that had called in. And how do you choose which theologian is the right one to turn to? We had one occasion where a gentleman in a cowboy hat and a late model Cadillac pulled up to the perimeter and he offered to negotiate Koresh out, was certain he could do it. The troops thanked him for his assistance but said we could handle it. As he drove off, his personalized tag said "God," and perhaps we should have turned to him, as well. I do not know.

But I think in terms of some of the armchair theologists who have criticized us, I think a good question would be how many times have they talked to someone with a knife at someone's throat, a gun to someone's head, or someone up on a bridge about to jump. Because the negotiators on our teams have done this hundreds and hundreds of times.

And while we listened to their advice and tried to take into account as many different suggestions as we could, ultimately we had to use the experience of some of the best negotiators in the United States who had been assembled for this effort. I always judge it on what would I do if my children were inside that compound.

I will tell you, the very last thing in the world I would do would be to have some untrained theologian try to talk to a religious fanatic to get my child out. I would hope that an FBI or a law enforcement negotiator with skill, training, and experience in how to

talk to people in crisis would be there to do it. That is ultimately what we did, Congressman.

Mrs. THURMAN. How long have you been doing this?

Mr. NOESNER. Negotiating for 15 years, in the FBI for almost 23.

Mrs. THURMAN. Let me ask another question that I do not think has been brought out, because we kept hearing about promises kept, promises broken. There was one last gentleman that came out of the compound, a Mr. Fagan, I understand. Would you like to give us the story surrounding that and what you believe happened? Because I think that plays a significant role in this, and we really have not talked about it.

Mr. NOESNER. I believe it does, as well. Mr. Fagan came out with a mission. The last person to come out prior to him was on the 21st. In fact, seven people came out on the 21st. It is at least my opinion, that maybe not everyone shares, that perhaps Koresh was beginning to have some concerns about some people having second doubts and wanting to come out. I believe he sent out Livingston Fagan with a very clear mission, and that was to thwart the flow of people out of the compound. You may have heard our whole strategy was trickle-flow-gush, trying to get as many people out as we could.

Every person who had been released from the compound, by agreement with Koresh, would call into the compound to indicate they had been picked up, well received, and well cared for, and that was a standard procedure. In almost every instance, in fact in all instances, we initiated the call to follow through on that agreement.

When Livingston Fagan came out, as soon as the tactical people literally put hands on him, he said you are mistreating me, you are beating me, I refuse to call back in. Then for the first and only time, no sooner had he been taken from the scene, David Koresh calls and says I demand to speak to Fagan. He had never done this before.

Of course, we had to report that Fagan in fact refused to talk to Koresh. We believe Koresh used that to convince other people inside that, look, the FBI is mistreating Fagan, they will not let us talk to him any more, and attempted to use this as a rationale to stem the flow of people outside. We feel the whole thing was a plant by Koresh.

Mrs. THURMAN. I have more questions, but my red light is on. I thank you very much for being here and sitting through this and certainly having to go through this all again. I can tell it has taken a toll.

Thank you.

Mr. MCCOLLUM. Mr. Barr, you are recognized for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

We have been engaged over several days, as I think you all can tell, asking a series of what I think are very insightful questions and receiving a lot of information. Lest you leave from here with the impression that everybody on that side of the aisle just cannot say enough nice things about you and we are all the bad guys—specifically the gentleman from Michigan who previously praised you, and I am sure he was sincere in that. Just 2 years ago in testi-

mony when these hearings were held, he called what you did a disgrace. So there is more than meets the ear in these things.

What we are trying to do certainly over here is ask some questions to avoid these problems coming up in the future, and I would certainly hope that you all would share in that.

Mr. Cavanaugh, I have in my hand here an amount of Playdough, just standard Playdough. If that were a flashbang grenade or a stun grenade, the same thing, which was live, which pin had been pulled, would you feel comfortable just holding that in your hand?

Mr. CAVANAUGH. Mr. Barr, a flashbang grenade ejects a cardboard tube out the bottom, so if you knew you could probably hold it in a proper way to have it eject. My answer is no, I would not want to hold it. But a flashbang grenade is no fragmentation at all.

Mr. BARR. I know that, and do not anticipate where I am going with it. I do not mean for you to be defensive. There is no reason to.

Mr. CAVANAUGH. I am sorry.

Mr. BARR. Earlier today, there was testimony from Mr. Schumer that these are not devices that can harm somebody. In fact, they can, can they not?

Mr. CAVANAUGH. Well, there is no fragmentation. There is concussion and a blast.

Mr. BARR. Is a flashbang the same as a stun grenade?

Mr. CAVANAUGH. A stun grenade, yes, sir.

Mr. BARR. Those are classified as destructive devices under 26 U.S.C., section 5845(f), are they not?

Mr. CAVANAUGH. Yes, sir, they are.

Mr. BARR. As a matter of fact, ATF in court takes the position in convicting people who possess these devices that they are destructive devices, is that true?

Mr. CAVANAUGH. Yes, sir, that is correct.

Mr. BARR. That they can kill people, is that true?

Mr. CAVANAUGH. I think you would have to hold it close to your body. It is possible, certainly, yes, sir.

Mr. BARR. Well, a gentleman by the name of Warren L. Parker, an explosives enforcement officer at the Bureau of ATF, on May 11, 1994, in court said under oath that they are designed to help kill the suspect, while not endangering the law enforcement officer when they are used for those purposes.

Again, I am not being critical of you or anything. I think there was some mischaracterizations deliberately this morning that I wanted to clear up with regard to these.

The question that I have relates to what appear to be some very serious miscalculations on the part of law enforcement officials trying to gauge the response of the people inside the facility there, both at the beginning of this—we had agents testify that, despite the fact that the folks on the inside knew what was coming, they had amassed large numbers of weapons, which is obvious from looking at the questions and hearing your testimony. The agents said they were stunned, they were surprised at what happened.

Then on the other end, what we are talking about right now, going in I guess with what you all consider somewhat more benign

activities, such as the introduction of the teargas, some surprise on the part of the firing that came out of there, and so forth.

I have here an autopsy photo, and I am not going to introduce it, because it is rather gross and it is very sad. It is a photograph of a 1-year-old child and it has been burned. Right in the middle of the remains is a ferret round, right smack in the middle of the remains of this 1-year-old child is a ferret round with the CS gas.

I find it hard to follow your thinking, if the activities on April 19 were considered to be benign. They caused a lot of deaths. We may never known exactly who died. A lot of the autopsies revealed people died from suffocation and debris falling on them and we may never know how much of that was caused from the walls caving in when the tanks came in, and so forth, or how many others might have died from the ferret rounds coming in.

Do you all feel—again, I do not mean to be critical, but I think there was some bad misgauging of responses on the other side—do you all recognize that, in hindsight, certainly, which is what we are all operating under here, that there were miscalculations with regard to how these folks in there would respond to what they I think correctly identified as aggressive moves? I am not saying the aggressive moves were necessarily unjustified. Is that of concern to you all, as you kind of look back on this whole process? Mr. Jamar.

Mr. JAMAR. I think the inability to get people to come out of there with some gas was a surprise to us. The fact that the way Koresh was able to control those people such that they did not get out and the fact that they end up all dying in what I consider a murder-suicide. I think there were 17 who were shot in there. When that was and how they were shot, I do not know.

I think you are saying, here is a ferret round lying in the remains of a 1-year-old child and concluding that child died from that ferret round is contrary to the autopsy, I would think.

There is no question that we were concerned about a mass suicide. On the other hand, we were concerned that if there was a mass suicide, how could we stop it, and the only means we had was——

Mr. BARR. You all had accumulated a great deal of information on the Branch Davidians over the course of the 51 days, a great deal of information, both direct and conclusory information on them.

Mr. JAMAR. Right.

Mr. BARR. Coming in as happened on the 19th with military vehicles, pushing cars out of the way and coming in and interjecting the CS gas directly into the building, and then as it progressed, I think the report says every window in the building, my question is, what response did you expect? Did you really expect them just to come out?

Mr. JAMAR. I expected the teargas to drive some people out, but you overstated it. These military vehicles had been around there for 7 weeks. The view of the——

Mr. BARR. I know they were in the area, but they did not come up and start knocking down the walls.

Mr. JAMAR. As close to the front door as you and I are. The cars and everything were removed the day before. There was no crashing through cars to get to the house. One tank approached the

compound, just one. All the others were back. The Bradleys were behind the concertina wire. They were announced. We were not in the semantics he was talking about.

The assault—hitting the building and punching holes in the building and injecting the gas is assault in any legal term. But the difference to us, when Byron announced it was not an assault, he immediately followed that with we are not entering the compound, it was not an entry. We were never going to enter the compound. We never fulfilled that aspect of the prophecy.

But the fact we used military is they had 55-mm armor——

Mr. BARR. Were not there walls knocked down?

Mr. JAMAR. No, not when they first approached. They just punched a hole in and injected the gas.

Mr. BARR. But thereafter?

Mr. JAMAR. Thereafter, holes were made in the compound. I am told by witnesses and everything else, of the nine survivors, seven were either directly rescued by an HRT or came out of holes created by those tanks. That is what I am told.

Mr. MCCOLLUM. Mr. Barr, your time has expired.

Mr. Wise, you are recognized for 5 minutes.

Mr. WISE. Thank you. I am going to yield some time, but I just want to note. Gentlemen, I think you had an incredible task ahead of you. You were dealing with a child abuser, you were dealing with someone who was molesting children, who was knowingly stockpiling automatic weapons, who is not wrapped real tight by anyone's definition, and yet you are supposed to negotiate your way through that. That is why I am greatly concerned about some of the Monday-morning quarterbacking that is going on in the decisions that you had to make. I think you did the best you could in a terrible situation.

At this point, I would yield 2 minutes to Mr. Schumer and 2 minutes to Ms. Jackson Lee.

Mr. SCHUMER. I thank the gentleman for yielding.

Mr. Sage, I want to take my shot at clearing up this business of whether there was ever a real surrender agreement, as Mr. DeGuerin and Mr. Zimmermann claimed yesterday, so please answer the questions as concisely as possible.

Mr. SAGE. Yes, sir.

Mr. SCHUMER. First, let me go through some of the major previous occasions on which Koresh built everybody up about coming out and then cut them down and ultimately showed himself to be a liar.

First, March 2, this was the big day when Koresh promised that everybody was coming out, if a tape he made was broadcast on the radio. The tape was in fact broadcast. All sorts of preparations were made for people lined up to come out. But David Koresh changed his mind and broke his word, did he not?

Mr. SAGE. That is correct.

Mr. SCHUMER. And the reason he gave was that God instructed him to wait, did he not?

Mr. SAGE. That is right.

Mr. SCHUMER. Second, March 19, Koresh said he was coming out in the next few days, did he not?

Mr. SAGE. Yes.

Mr. SCHUMER. But in fact he never followed up on that promise, did he?

Mr. SAGE. No, sir, he did not.

Mr. SCHUMER. March 31, this was the Passover promise. Both the attorneys who were here yesterday, DeGuerin and Zimmermann, said that Koresh had agreed to come out after Passover, did they not?

Mr. SAGE. They said that, yes.

Mr. SCHUMER. And did Koresh himself not confirm in a conversation on April 2 he was coming out after Passover?

Mr. SAGE. That is correct.

Mr. SCHUMER. Then there was some confusion about exactly which date David recognized as Passover, but after all those possible dates passed again, he again broke his promise and did not come out, did he?

Mr. SAGE. That is correct.

Mr. SCHUMER. So there were just these three of the major highlights of times Koresh promised to come out and broke his promise.

Now, turning to the testimony you heard yesterday, and specifically the claim that there was an agreement, a specific plan to surrender, not just some attorney's gratuitous proposal, but an agreement, was there ever such an agreement known to you?

Mr. SAGE. There was a hope embraced by the attorneys in good faith. There was never an agreement that I was aware of.

Mr. SCHUMER. Thank you. So you never regarded it as viable, as a firm deal, as a real agreement the proposal routed through Mr. DeGuerin to wait until Koresh had issued his analysis of the Seven Seals. You never really thought that that was an agreement so that you should stop everything and wait, did you?

Mr. SAGE. No, sir.

Mr. WISE. I am going to reclaim my time so that I can yield to Ms. Jackson Lee.

Mr. SCHUMER. That is good enough. Thank you, Mr. Wise. Thank you, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you, Mr. Schumer. And thank you very much, Mr. Wise.

Mr. Noesner, I wanted to ask you did you fail to take into consideration David Koresh's religious beliefs? Was that something that was very much a part of this ongoing negotiations? I need a yes or not in a sense, since my time is limited, as well.

Mr. NOESNER. We did take it into consideration.

Ms. JACKSON LEE. And were you working with him then on what he was attempting to get done in order to get his word out?

Mr. NOESNER. Yes, indeed.

Ms. JACKSON LEE. There was some discussion about frustration. These are not transcript that I believe are done by the Justice Department. I believe these are summaries of transcripts given to us by witnesses yesterday. It reads, "The Transcript of the Last Recorded Words of David Koresh." But it does provide an interesting point, because I think these individuals, the theologians certainly had concern about David Koresh.

It has the FBI saying, "I am not frustrated. I went home and I am back. I am no longer frustrated. I was never frustrated." Was that the sense of the negotiations? Were you continuing to try and

do as much as you could, Mr. Sage, to insure that these people came out?

Mr. SAGE. Absolutely, up to and including the 19th.

Ms. JACKSON LEE. I think we looked at my earlier questions, I wanted to come back again to the point of whether or not we were going all the way to the end and trying to make sure that these people came out safely.

Mr. Jamar, I asked you about the architectural structure and whether you knew about it. I do not think you ever got to answer that question. And what was the preparation in order for them to be able to come out? What ways were you looking at, as the CS gas was going in, what were the exits that were clearly there for them to be able to come out?

Mr. JAMAR. Do you want me to walk up there?

Ms. JACKSON LEE. I would appreciate it. Thank you.

Mr. JAMAR. The initial gas was going to be here in this corner. It was there.

Ms. JACKSON LEE. Actually, if you could speak louder, I would appreciate it.

Mr. JAMAR. I am sorry. The initial insertion of gas was right here. The thought was we would contaminate this part of the building in the lower level. It would be clear to the occupants which is coming next, but that was always going to be, the thought would be that they were going to move here. The hope was the realization that we were not going to stop the gas, it is going to ultimately make the whole place temporarily uninhabitable, if that was going to come. We thought some people would still come out even with just one insertion. There was this door. There were doors in the back.

Ms. JACKSON LEE. And they were not obstructed or they were not nailed shut, as far as you know?

Mr. JAMAR. As far as we knew at the time. Later on, we discovered that this door was—there were no people coming out and we put a lot of gas in there. The gas was not that effective, which I think we are going to get into more detail later in the hearings. But we thought people should be coming out, so we said let us see if that door is blocked. So we discovered that it was, so we made——

Ms. JACKSON LEE. So you were pushing was what, manual or by the——

Mr. JAMAR. It was with a CEV vehicle.

Ms. JACKSON LEE. I understand.

Mr. JAMAR. We discovered that was barricaded, so we put another hole right here.

Ms. JACKSON LEE. And was the whole intention to cause an explosion, or was it to see if people would come out?

Mr. JAMAR. It was to make an exit for them. We discovered this was blocked and there was no other door, except to come out the windows, which a couple people did come out the windows. But we made a hole here.

Ms. JACKSON LEE. So the holes were specifically to be able to let anyone who was finding an obstruction or could not find any way, here is a big hole for you to come out of?

Mr. JAMAR. Yes. We did that later over here inside this little courtyard, and we did it over here, right in here.

Ms. JACKSON LEE. By the visuals on television, would you say it was a coincidence that as some of that ramming was occurring, the fire sprung up which gave the impression that that might have caused the fire?

Mr. JAMAR. Well, on television most people said they saw this smoke here first, and I think about 7 or 8 minutes previous there had been the approach from here and the tank had pulled away.

Now, from the observation I made from the air, there was as huge fire behind this tower right here in the kitchen area. There was another fire here. It was very easily discernible from the air.

Now, the wiretap of the microphone prior to 12 o'clock, right at 12, right in that area, not 12:15—the transcript does not have a precise time, but it was after 11:40—"let's not let the fire go out." The fire is already going. We just had not seen it yet. I think the microphone was right in here somewhere. I think that is the fire we are talking about. We saw——

Ms. JACKSON LEE. Seeing it shoot up.

Mr. JAMAR. This is what you saw on TV. I did not see this for a long time. But I believe from over here, which is between 11:40 and—because whenever that tank entered right here later, that is when the microphone went out.

Mr. MCCOLLUM. Ms. Jackson Lee, your time is expired. Mr. Jamar will be back during two more panels doing exactly this type of discussion.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I wanted to emphasize the escape route. I thank you very much for giving me the time. Thank you, Mr. Wise.

Mr. WISE. You are welcome.

Mr. SAGE. Mr. Chairman, may I make one comment in the furtherance of the topic of today's panel negotiations?

Mr. MCCOLLUM. You may, Mr. Sage. Mr. Zeliff has time, too. Do you want to do it at the end or——

Mr. SAGE. That is fine.

Mr. MCCOLLUM. This has nothing to do with Ms. Jackson Lee's question, I assume.

Mr. SAGE. It does somewhat, because of the——

Ms. JACKSON LEE. May he answer that, Mr. Chairman.

Mr. MCCOLLUM. Yes, that is what I was getting around to, Ms. Jackson Lee, if there was a connection or if you wanted to wait until the end. Go ahead.

Mr. SAGE. There is a connection, in that when we began with the insertion plan of the CS gas, one thing that this panel please needs to remember is that that did not mark the end of negotiations. It was our intent, and I was instructed to go out there prepared to negotiate, continue negotiations forward to facilitate the safe and orderly exit of those people for up to 48 hours. It did not herald the end of negotiations. We were hoping that it would prompt the end of the standoff.

Mr. MCCOLLUM. Thank you, Mr. Sage.

Mr. Zeliff, you are recognized for 5 minutes.

Mr. ZELIFF. Thank you, Mr. Chairman.

You know, we have a great deal of respect for all of you and the testimony you have given today, and we had an equal amount of respect for Mr. Zimmermann and Mr. DeGuerin yesterday. They spent 6 hours in very credible testimony.

I am really torn in trying to listen to them and then to you in terms of this negotiation offer. I just want to understand exactly. You apparently had a 2-hour conversation with Webster Hubbell on April 15. For the record, did you or did you not tell him even in a general way as part of that 2-hour conversation was there a surrender offer on the table that had been discussed with Koresh, Koresh's lawyers, and the Texas Rangers, which they in their testimony admitted to last night, and of which Mr. Jamar was aware?

Mr. SAGE. I will state again that there is much more importance placed on this evolution than was in fact there on April 15.

Mr. ZELIFF. So you did not mention it at all?

Mr. SAGE. Let me finish. It was not an agreement. I do not specifically remember highlighting it, because there was no credibility to it at that time. We were hoping there would be, but it had not come to pass.

Mr. ZELIFF. Well, the Texas Rangers felt that there was an agreement of sorts. They were aware of that. In my judgment, it is very hard for us to listen to what we heard last night and then with seriousness of what we are going forward with on April 19. I guess what I am trying to figure out is did anybody have an open mind, or was the gas plan going to be the deal.

Mr. SAGE. The open mind as exhibited by the fact that we probed this issue extensively from the 14th until up to and including the evening of the 18th, specifically attempting to determine whether or not there had been any demonstrated progress in the area of this alleged manuscript. There had been none, not according to us, according to Steve Schneider. There had been none.

Mr. ZELIFF. What was Mr. Hubbell's reaction?

Mr. SAGE. To what, sir?

Mr. ZELIFF. Did he ask you if there were any last-minute plans discussed in terms of any surrender?

Mr. SAGE. My recollection of the discussion with Mr. Hubbell was the overall dynamics from the perspective of a negotiator that had been there in the trenches for the entire period of time, nearly 50 days. Again, I am not attempting not be evasive here at all. I am trying to be as candid as I possibly can. The reason I cannot definitively state it is because it was not the issue that you are portraying it to be.

Mr. ZELIFF. I am just trying to think, we are talking about a plan. Also, in the book here on page 271, the Justice Department, April 16, Mark Richard, Assistant Attorney General, met with Hubbell and Carl Stern, Director of the Office of Public Affairs. According to Richard, Hubbell advised him that the Attorney General had disapproved the plan to end the FBI standoff. Hubbell then asked Richard what he thought the FBI's reaction might be. Richard answered that the FBI would not be pleased.

I am just trying to go through all these conflicts and try to come up with some reasonable base. I guess we will probably never know.

Mr. JAMAR. Mr. Zeliff, can I add to that?

Mr. ZELIFF. Yes.

Mr. JAMAR. I have not said this very well today at all. We are going from a discussion of a surrender plan and an agreement from the previous early April to come out after Passover, and we heard he was going to change the date of Passover, but it did not occur.

Mr. DeGuerin had put his best professional ability and his heart and soul into it and it just did not happen. He, of course, was refused. He did not give up. He stayed after it and he came up with this one. Just like a lawyer comes up with a case, this was the case that was going to do it. What he had here was as judge that was not going to permit that case to be considered. But it did not stop him from doing it and it did not stop us from listening. But for them to imply that there was an agreement with us, we will hold off and not doing anything until this is resolved in 10 or 12 days is just not the case. That was never even close.

I valued my relationship very much with Mr. DeGuerin, and it bothered me for him to say—and maybe I read it in the newspaper—that I had lied to him that day. It is not the case. What he did was he is a person used to being successful. He does not run into failure that much and he wanted to make sure—just like he took what Koresh was saying, I think he maybe wanted more out of what I said, and then it followed very soon thereafter, which made him even more upset, I am certain of that.

Mr. ZELIFF. Let me just go through one other event. Again, I am just trying to figure this all out, so if somebody asks me at a town meeting, I can explain it to them and it makes sense and they will accept it. I think that is what all of us really are trying to do, how can we explain it to the American people.

There is a visual image that I have, and I do not know whether it was CNN or whatever, that I saw the tanks going in, and I also heard the recording "This is not an assault." But the tanks were penetrating that building and if I were inside, I would figure it is probably an assault. I will give both of you a chance to answer.

Let me finish, because I am going to run out of time, and then you guys can take as much time. That is the way we have got it worked out here.

I want to just show that on Ruby Ridge—and if the clerk will pass a copy of this—on the Marshal Service Crisis Center Log, there was as little footnote in there, and it is noted as 567, Crisis Center Log, August 22, 1992, entering at 4:50 p.m. The log also stated that weather was a major factor.

By the way, somebody said there was no new information. The winds were 30 to 35 miles an hour at Waco, I believe, on the 19. I will let you address that, too—late that afternoon, but might be passed back because of weather conditions. Concern was raised about the deployment of gas into the residence because of high degree of risk to small children and the possibility that a one-year-old baby was inside.

I am just trying to figure out, as we moved forward with the plan on April 19—and this is just a quick question—did you in the early morning hours of the 19th or the late hours of the 18th ever tell women and children inside the compound that negotiations had come to an end and that this is their last chance to come out before the gas was inserted?

Mr. SAGE. No.

Mr. JAMAR. No.

Mr. ZELIFF. And the biggest question is why did we use the gas, when we knew in Ruby Ridge that it was wrong? Why would we use it at Waco? I will let both of you respond.

Mr. JAMAR. The decision to use CS gas was based on the information received. The decision was made on CS gas as could be possibly effective to them, but not to be permanently damaging or deadly. We went on that premise. It was not a cavalier attitude towards children, by any stretch of the imagination.

We were confident from the information we had that this teargas is the best, if we were going to have to use teargas, it is the least toxic or caustic, whatever, however you want to say it. It is not toxic at all, but we did not think that children would be permanently damaged or otherwise harmed by that gas. If we had thought that, I promise you, Mr. Zeliff, we would not have done that. If I believed that, I would not have done it.

Mr. ZELIFF. Thank you.

Mr. SAGE. Can I add to that?

Mr. ZELIFF. Mr. Sage.

Mr. SAGE. First of all before I address that issue, you mentioned earlier something about the Texas Rangers thinking that he was prepared to come out.

Mr. ZELIFF. I do not want to leave a false impression. My understanding of the conversation yesterday—and it is a matter of record—that they were aware of a plan that Mr. DeGuerin had worked out with the Branch Davidians.

Mr. SAGE. By this time, they were an integral part of our negotiation team. The Texas Rangers were part of the negotiation team from approximately mid-March. They should have been earlier on. That is one of the mistakes. My feeling is I should have brought them into it or made a recommendation to bring them into it considerably earlier.

But they were part of the analysis, they were part of the negotiation team at that time, and they certainly agreed with—at least my recollection is that they agreed fully with it. So they were of a common mind with us, with the rest of the combined joint agency negotiation team that Koresh had no intention of coming out. They agree with that fully.

You had asked whether or not we had told them that negotiations were over and that the teargas was to be inserted. Negotiations were not over. We stood ready to continue to facilitate those negotiations. A call was put in there, as I mentioned, at 5:59 approximately the morning of the 19th of April. Steve Schneider listened to the initial portion of my discourse to him, whereupon he hung up and shortly thereafter threw the phone out the window. It is a little difficult to negotiate with the phone out the window.

We still stood ready to reinitiate that, if in fact they would indicate that the reestablishing of that phone was to facilitate the safe and orderly release or exit of everyone in that compound. We stood ready to do that, sir, up until the flames ended.

Mr. ZELIFF. I guess the only question I had and the only reason I ask it again with the red light on is did we at any time give them

formal notice that it was over, even it was 2 seconds before you put the gas in, before the gas was inserted in the building?

Mr. SAGE. Yes, sir.

Mr. ZELIFF. We gave them notice that they have 2 seconds to come out before we start or——

Mr. SAGE. No, we gave them notice before the first CEV had made it anywhere near the compound to begin the gassing operation. They were notified both over the phone and simultaneously over the loudspeaker system, because I did it. I had the phone to my ear and the microphone to my chest.

Mr. ZELIFF. I guess the problem I have, and I will not have it figured out yet, is if the stuff at Ruby Ridge, if CS gas was bad there, why was it not bad at Waco. I will have to figure that out, sort that out as we go through the rest of the testimony, unless you want to add anything to it.

Mr. JAMAR. I think there will be a full-length panel discussion tomorrow about that.

Mr. MCCOLLUM. Thank you very much, Mr. Zeliff.

I yield myself the 5 minutes. I do not believe there is anybody else who has time left on this, and then we will conclude the panel.

First of all, though I will thank you formally when you do get recessed, thank all of you for the time today. Several of you will not be back, although Mr. Sage will be back. I know you are going to be back with us three times altogether.

I do want to make the comment that I find almost everything you said today to be right down the line with what I expect from my FBI. I think you have explained this very, very adequately for most people's consideration.

The only really disturbing thing that remains here today, and you should be aware of it by the tone of all the questions, is the sense that I think several of us get up here that you did not take seriously—and maybe you should not have, I am not saying you should have—that you did not take very seriously the ideas that Mr. DeGuerin was presenting on the 14th of April, that there was really something new here, and what Dr. Tabor and Dr. Arnold said to us last night, that they felt that this was as real breakthrough with Koresh and that indeed he was looking at things differently on the 14th in terms of his prophecies and he really did not intend to commit suicide, if you will, or be a martyr or kill people or have people die at that point, that he had completely changed.

I can understand why you might not buy into that. But it appears that because you did, you testified that neither you, Mr. Sage, nor you, Mr. Jamar, personally thought enough of it to make a big point of it, at least a point well enough emphasized to potentially get the full flavor of that back through the chain to the Attorney General.

I think from today's testimony, it is pretty clear that you two did not do that. Now, I am not faulting you for not doing it necessarily, but it is a point that I think is worthy of our being concerned, simply because that is the point that those who are most concerned about this incident have raised with regard to the negotiating part. That is what they have criticized most directly, and I think we now have a pretty good grip on why.

With that in mind, I have just two quick questions not related to that. Mr. Noesner, I want to ask you something. Whether it was from Mr. Reavis' book or whether it was from the testimony that I have heard in the last few days, and we have heard a lot of stuff, but I am not sure where, but it is my impression that there were tapes that were shown back inside the compound during the seige that were made of the children that did come out or some of the children, in order to demonstrate they were OK.

In part, one of the critics has said that this upset the folks inside, not because the kids were ill or anything, but because they were shown eating candy bars and doing things which would not have been permitted inside the compound, and that this was extraordinarily upsetting and could potentially have had some effect inside negatively on all the negotiations. Could you comment on that? Is that accurate? Did those tapes go back in? Was that in retrospect somewhat of an error?

Mr. NOESNER. No, it was not an error whatsoever. In fact, it was very innovative strategy. I think we might have got one complaint from one mother who already had demonstrated a great deal of anger at us and was made because her child was eating ice cream, something which she never allowed. Other than that, we think they were extremely positive.

The intent of sending the tapes in there was to demonstrate to the parents that their kids were being well cared for. But more than that, when the kids would come out, they would have a little note saying that my child is to be sent to a relative or a friend to be raised. As negotiators, we were concerned that this was in essence the parents taking are of the final responsibility of their children, settling their affairs and now being willing to set the stage for their suicide.

What we conveyed to the parents is that, no, the children are not being sent off to Aunt Sophie in Des Moines, that in fact they are staying right here with the Child Protective Services, and we are waiting for you to come out and resume your parental responsibilities. We also think those tapes had a very powerful impact on doing what we intended, and that was tugging at the heart strings of these mothers to try to rekindle their maternal and fatherly responsibilities to break them from the hypnotic sway of David Koresh.

We also sent a very innovative tape in. We sent tapes of the kids, and David Koresh sent a tape out on March 8. We did something that to my knowledge was never done anywhere. We sent in a tape of the negotiators, and I and four or five other negotiators who had talked with him at that time, each of us were videotaped showing photographs of our families and personalizing negotiations, saying, Mr. Koresh, David, my name is Gary, I am one of the ones who has been talking to you, and this is my family, and I love my family and I know how you love your family and I want you and everyone in there to know that we are doing everything within our power out here to make sure that you and everyone inside and your children are going to come out here safely and are going to be treated with dignity and respect. I think those tapes accomplished a great deal.

In fact, when Kathy Schroeder watched the tapes, she was so moved that her child Byran needed her, that John Dolan, now a retired FBI negotiator, was absolutely brilliant in convincing her that little Bryan needed more than anything else right now a hug from his mommy, and she immediately without consulting with David Koresh said I am coming out tomorrow, and she did.

Mr. McCollum. Well, I think that point is well made.

Mr. Sage, I want to ask you and then perhaps have Mr. Noesner, Mr. Smerick or anyone else comment on this as you want, about the mass suicide commitment. I am confused a little bit and I would like you to express this to me.

In the Justice Department report, it appears that near the end of all this, the 15th, 16th, 17th, when they are discussing this back in Washington, they have reached the conclusion based on representations from you that it is your impression that suicide is not likely, it is possible, but now at this point you did not think it was likely.

However, we have heard testimony today—I think you made it, Mr. Jamar, and I am going to turn to Mr. Sage first, but I would be more than happy to have you comment on it—that at some point afterwards, whether that is because of the fire tapes, I am not sure what, and you need to clarify it for us, that you concluded that there was a suicide pact. At least I am thinking that is what you said. If not, we need to clarify hit.

However, at the time you did not think so. I am of the impression that the tapes that were made of the last few days of the discussions that went on and the negotiations and so on, or perhaps the eavesdropping tapes, that those together, what was presented to us in part last night by Drs. Arnold and Tabor, would demonstrate that the folks inside leading up to the 19th were not at all in a suicide attitude, that perhaps since the 2d of March or so they were for the first time in those last few days openly optimistic, talking about coming out, being an attitude that was just much more upbeat in the last 2 or 3 days of this or last 4 or 5 days.

They attribute, that is Arnold and Tabor, and I believe DeGuerin, this attitude shift that is shown in these tapes that they say they have reviewed that are in existence, and I am sure you reviewed—of course, you were hearing it at the time—to the change in Koresh's viewpoint of the world and the basic interpretation of the seals, and so on. I do not want to get too much in that, but that is what they attribute it to.

Nonetheless, whatever the reason may be, they say those tapes would demonstrate and the conversations and the attitudes of the people, all people in the compound that suicide was the furthest thought from their mind prior to the entry of the gas and the notice of that in the early morning hours of the 19th, for the previous several days. Which is it now that we look back? I am just asking this: How do you reconcile this?

Was your first impression right, and that, of course, would have been consistent with the tapes, their interpretation of the tapes, Tabor's, Arnold's and DeGuerin's, that the folks inside were not contemplating suicide up through this point, or was it that they had a suicide pact and they were ready to release it? Or is there a way to reconcile these two? Knowing what you know about

Koresh and the people inside the compound, all these negotiations, before we dismiss this panel today, and the negotiators are part of this, I would like to know.

Mr. SAGE. I would, too. Throughout the course of this 51-day period of negotiations, as I mentioned before, we addressed this issue head-on, which is the recommended approach, do you intend to commit suicide. I have several examples where he steadfastly denied any intention, nor did he embrace the concept of a mass suicide.

The bottom line on this, sir, in my estimation is that this man was an absolute master of deceit. He also exercised absolute control over his followers. He may well write a new chapter in the behavioral science books and so forth. We took him at his word, not just from these quotes, but from some of the subtle responses that we elicited from him and from others in there that were survival oriented.

We now know with the luxury of hindsight, which we did not have then but we all now have today, from testimony of some of the surviving Branch Davidians, that yes, they did have a suicide pact, and it is very clear that they did in fact, at the direction or at the hands of David Koresh, consume the lives of over 78 Branch Davidians on the 19th.

Mr. MCCOLLUM. Mr. Jamar or Mr. Noesner.

Mr. NOESNER. You also will frequently see some ambivalence in suicide, and that is some uncertainty and doubt. There are those who suggest—and I do not necessarily agree with those who say David Koresh was planning every moment and knew exactly what he was going to do and had a specific ending in mind. I do not necessarily buy that. I believe David Koresh was stalling and playing day for day. He certainly prepared his followers for suicide. That was part of his theology, and I think based upon the events as they unfolded and how he interpreted them impacting on him, that was the determining factor as to whether or not any suicidal act would follow.

I think ultimately on that final day, for David to give up his kingdom and all his special privileges to go to jail was more than he could do. He even mentioned at one point in time, and we have it on tape, he said, "I don't want to become Bubba's love toy in prison."

Mr. MCCOLLUM. I do not want to elaborate because my time is expiring and I want you to answer. But Tabor, Arnold, and DeGuerin would interpret it as meaning that he decided on suicide, if he did or the group did, after the gas was being inserted or at the time it was, or in preparation for it when they knew about it, but that their attitude was different in the preceding 5 days, and none of you have addressed that. But do you think the tapes show that their attitude was inconsistent with suicide for those preceding days, and whether the hypothesis that has been put forward by Arnold, Tabor, and DeGuerin could be debunked or not?

Mr. NOESNER. I am not sure if I fully understand, but I do think that the insertion of the gas certainly triggered in David Koresh's mind that he was going to begin this suicidal plan, there is no question. If the question is did the insertion of the gas trigger

David Koresh implementing his ideas about suicide, I think yes, it did.

Mr. McCOLLUM. Does anybody else want to comment? I do not want to belabor it.

Mr. JAMAR. Yes, sir, I just wanted to follow the negotiator there. The analysis we did was how serious was the suicide pact in there from March 1 on. We did not hear anything specific until Victorine Hollingsworth came out on March 21. Her statement was corroborated by Marjorie Thomas, who was one of the survivors of the fire, and by Kathy Schroeder who came out or expelled by Koresh.

That was in our minds, but our analysis that if we do this, are we just going to have a mass suicide. Our thinking was that if there is a plan for mass suicide, that we do not think there was at the time, and it starts, how are we going to stop it. The only way we can stop it is to insert CS gas. But we were hopeful that when we did this, that it would drive the people out and make the place uninhabitable. We were extremely hopeful there was no suicide plan. Were we certain of it? Absolutely not. I think with the analysis and the recommendations, there was not, based on all of these conversations for all these weeks.

I think that in the reading of something, if you really believe something, you are going to read it into it anyway. I think what I will do is I will reread what you just described to me and I will give that as open mind as I can give, and I will reread those.

Mr. McCOLLUM. The tapes, you mean, the transcription of the tapes?

Mr. JAMAR. The tapes, with that in mind. Again, I did not way it was bogus. I did not reject that plan. All I said was give us something this weekend that will show that you are serious, but all they gave us was the stall language, I have not seen the first tape, I have not seen the first page, I am going to edit it, you are not going to get it until I edit it, and I have not seen the first page. We get that on Sunday. That is what we were getting.

I was not getting any of this hopeful description of we have a new light and everything is wonderful in here. I never got that at all. But I will reread both the overhears and the negotiation transcripts. I will reread them in mind with nothing else in mind, I will read that.

Mr. McCOLLUM. You will be back with us and I appreciate if you would do it. It would be very helpful to us.

I want to thank this panel for spending much of the day with us today. It has been a very extraordinary day and a very important day. We will resume with two or three of you in the future, but that is all for now.

The second panel will commence after you have had a chance to get up and the other folks can come in.

Thank you.

We are not really in recess. We need to have as much expedition as we can here. We have got several people who are coming in as witnesses.

I would like to start introducing them, if we can, if we can get the first panel cleared out. I know that is not quickly and easily done sometimes. As we know, we are running long hours in this subcommittee.

I will begin introducting our second panel today. There are name plates up here for your position I will swear you in and we will talk about the procedure for this panel.

Dr. Alan Stone has been a professor of law and psychiatry at Harvard University since 1983. Dr. Stone has been board certified in psychiatry for almost 30 years. He is a past president of the American Psychiatric Society. As a professor at Harvard, he holds appointments on both the faculties of the law school and the medical school.

Dr. William Marcus, our second witness on this panel, is Senior Science Advisor at the Office of Science and Technology of the Environmental Protection Agency. He is board certified in toxicology by the American Boards of Toxicologists. He is also the associate editor of the Journal of Environmental Pathology, Toxicology and Oncology.

Dr. Paul Rice, our third panelist today, is a medical doctor and pathologist. Since 1987, he has served as head of pathology and general toxicology for the Chemical Defence Establishment in Salisbury, England.

Our next panelist is Dr. David Upshall, who holds a Ph.D. in toxicology and is a registered toxicologist in England. As a manager of a section of the Chemical and Biological Defence Establishment in Salisbury, England, he is involved in research on inhalation and cellular toxicology research.

Our next panelist is Dr. George Uhlig. He is professor of chemistry and mathematics at the College of Eastern Utah. He also is vice president for research and development at Thermic Laboratories in New York City. Dr. Uhlig is a 23-year veteran of the Air Force, retiring with the rank of lieutenant colonel.

And our last member on this panel today is Mr. Hays Parks, a special assistant to the Judge Advocate General of the Army. He is an expert in international law relating to military operations and has served as a member of the U.S. delegations for law of war negotiations on many occasions. He has taught at the Army, Air Force, and Naval War Colleges, and is an adjunct professor at George Washington University. Mr. Parks served in Vietnam as an infantry company commander and later as a judge advocate. He retired from the U.S. Marine Corps with the rank of colonel.

I would ask all of you to please rise and I will swear you in. Will you raise your right hand: Do you swear or affirm that the testimony you are about to give today shall be the truth, the whole truth, and nothing but the truth?

Dr. STONE. I do.

Dr. MARCUS. I do.

Dr. RICE. I do.

Dr. UPSHALL. I do.

Dr. UHLIG. I do.

Mr. PARKS. I do.

Mr. MCCOLLUM. Please be seated. Let the record reflect that all of the witnesses answered in the affirmative.

[Witnesses sworn.]

Mr. MCCOLLUM. Today's second panel will be a little different in that four of the witnesses by preagreement will give 10-minute testimony each. I am going to introduce you in a certain order for this,

so you can prepare yourselves for that as I describe the rest of the procedure.

Dr. Uhlig will be first, Dr. Upshall will be second, Dr. Marcus will be third, and Dr. Rice will be fourth, to try to just give us a flavor and balance. That is our best estimate of how this should be proceeding. Dr. Uhlig, Dr. Upshall, Dr. Marcus, and then Dr. Rice, in that order.

Now, the way this is going to work, since you have got 10 minutes, I am going to turn the timer on when each of you begins. The timer is scheduled to run for 5 minutes, not 10, so you will see a yellow light go off and you will then have another 5 minutes and it will run down to a second yellow light. We really do have to keep with this, just as we do up here with our questioners, or we will not get through this.

This will take us a while to do, the better part probably of the next 45 minutes or so. But we need to try to keep on this as much as possible. But I think it is important for the CS gas questions that you are going to be discussing, for us to give you a chance to explain this to us, since there is a lot of technical stuff here, rather than just starting out with a question session.

With that in mind, if we could begin with you, Dr. Uhlig, I will turn the timer on, if you are ready to proceed. You are recognized for 10 minutes.

Dr. Uhlig.

STATEMENT OF GEORGE F. UHLIG, PH.D., PROFESSOR OF CHEMISTRY, COLLEGE OF EASTERN UTAH

Dr. UHLIG. Mr. Chairman, thank you so much for the opportunity to come here.

Let me start out with the very positive side. I have heard a lot of negative today. It has been about 15 years since I have had a good helping of collard greens, and you serve some real good ones downstairs in the restaurant.

Let us go ahead and press on on CS. I am a chemist. I am not an expert in CS. The first time that I experienced the effects of CS was when my research assistant Anita Dingman and I made a videotape that I have got here of the combustion of CS methylene chloride on cardboard. It worked very well, I should say, and that video is there.

I am not going to try and bamboozle you with a lot of fancy equations. We are going to make reference to amounts of CS agent. Being an educator, I like to use little tiny saccharin tablets so that you get a feeling for the size and weight of CS based on quarters. We all know about what the heft of a quarter is.

Now, CS is an abbreviation that many of us would use for brevity's sake. As a chemist, it stands for orthochlorobonzylidene malononitrile. That is a mouthful and a half, especially at this time in this hearing. It really takes its name from the two scientists that discovered it, Corson and Stoughton. They prepared it in 1928. It has been the standard riot control agent of the Army since about 1959.

I was horrified to find it in the possession of my female students in my classes as a self-protection device, 10 percent CS and methylene chloride, and they carry these little tubes in their purses.

The physical state of CS is a powder, usually a cream-colored powder, not a gas. You disburse it as an aerosol cloud of finely divided particles. You can blow it by blowers, bursting grenades, ferret rounds, or burning a mixture of the powder in a fuel. The effects of CS are described in Army publications that I was able to get my hands on as "impressive." You need about 20 milligrams per cubic meter to effect incapacitation. This little tiny saccharine tablet that you barely can see is 20 milligrams, actually about that. Some of them weigh 18 milligrams, and some of them 20. So that is about the size in a cubic meter.

Now, a cubic meter is about the volume of your standard 26-inch diagonal TV set. That contains about 35 cubic feet of air. If I stuck my head in there with 1 of these little tiny tablets for 1 minute, I would breathe about 1/64th of this tablet, if the Army calculations are correct—and they seem to be to me—and that would incapacitate me.

What does it mean to be incapacitated by CS? Now, understand this is for the usual dosage. The affected persons experience severe burning sensations in the eyes with copious tears. My research assistant Anita Dingman experienced this in making this video. The eyes close involuntarily. The nose runs and moist skin stings.

Amnesty International produced a report toward the end of the 1980's. They were concerned about the excessive use of CS by the Israeli Defense Forces, or the IDF, in the occupied territories. Their findings are about what it meant to be incapacitated by excessive amounts of CS—intense tearing of the eyes, shortness of breath, irritation of the respiratory tract similar to an acute asthma attack, chemical burns, intense nausea, retching, abdominal cramps, and, particularly in children, severe and protracted diarrhea. That is a quote from their report.

I tried to get some feeling for the amount of CS used at Waco. It is very difficult to get your hands on accurate data. Nonetheless, it appears that about 400 of these ferret rounds were used or in excess of them. There are some sources that indicate a flight right round was used. Some folks would go as high as 500 pounds of CS used. I have a tendency to discount that. I think it was more on the order of around 4.5 to 7.5 pounds.

If you are an animal, we understand very well what the toxicology of CS is. If you are a pig, for instance, about 5,600 milligrams, which is the weight of about 2½ dollars' worth of these quarters, and this is injected in a space of a cubic meter over 1 minute. If you are a guinea pig, it is about the weight of $1.50 worth of quarters. Now, do not go quoting me that a guinea pig is only worth $1.50. It is the weight of the quarters.

I ran across an article in the British test of halon fire extinguishers on humans, and they found that the toxicity levels were considerably lower than that for rats, and I am going to quote from them. The British have a marvelous way of expressing themselves. This may be because of the greater mental complexity of the human organism and the different body chemistry, or it may be simply that rats were feeling rather odd, but nobody knew.

Now, the best I have been able to do in making a calculation of what it would take to completely kill people in Koresh's size facil-

ity, it would be in excess of 1,000 pounds of agent applied in that facility. I think that is just totally inconceivable in my mind.

I tried to get a better estimate of the amount of CS that could have been injected based on the fireball seen by survivors and assuming that the dust would carry that fireball through the hallways. I was fortunate in finding a publication from the Fire Institute at Lester, England, that gave me a range of dust particles. So if I were to take about a quarter of a sack of this Equal right here and dispense it into a cubic foot, then I would have sufficient material—by the way, Equal does burn very nicely, and so does sodium bicarbonate, at about those ranges. So does cement powder at about those ranges. So it could have happened.

But when you do that and you cut things down and you look at an order of magnitude less than that, you reach the conclusion about 75 pounds to 750 pounds, which I still think is excessive. I looked at the logistics of bringing that amount of material in. A 55-gallon drum, according to manufacturer literature, contains about 200 pounds of CS. If I am looking at an agent called CS–1, which is a much more persistent agent, this comes ten 8-pound bags packed in a 55-gallon drum, so the logistics of the situation to bring 1,000 pounds onsite would be 5 55-gallon drums, 13 55-gallon drums of the CS–1 material. Methylene chloride, by the way, in and of itself is a toxic material.

The amount injected at Waco that day, probably the lowest estimate would be sufficient to incapacitate people in about a 200,000-square-foot K-Mart store, just to give you a feeling for it. It was probably 2 to 4 times the amount that you would need to incapacitate the people in David Koresh's complex, just to give you a feeling for that particular number.

I think Attorney General Reno—and this is my opinion—may have gotten her wish regarding the children. Gasmasks do not fit children very well. They probably, taking a look at some of the data, the bodies and number of children that were found in the vault area. These people were probably asphyxiated early on in the game either by the carbon dioxide injected or by the methylene chloride vapor. All the methylene chloride would have been a vapor. Calculations using the ideal gas law indicate this. You can take me to task because I did not do all my sums, but there is not that much hard data available.

In my opinion, the attempt to bring the siege at the Branch Davidian complex to a conclusion was really botched. I think it was Congressman Conyers—my time is up, according to my watch—Congressman Conyers made the statement that a lot of money was being spent to look at this. In my opinion, perhaps the law enforcement agencies should have gone ahead and admitted to making some boneheads and just pressed on and told this committee what they were doing to take care of it.

It is a lot like a cat that we have at home that we call Snoozer. We play hide and seek with Snoozer. When it is Snoozer's turn to be found, she has got just her head either under the curtains or under the couch. She gets terribly annoyed when we find her. You know, if a quarter of her is under the couch and three-quarters are hanging out, similar to this type of investigation.

My time is up, Mr. Chairman. Thank you.

Mr. McCOLLUM. Thank you very much, Dr. Uhlig. I will not dispute your taking the amount of time you did. With all of you knowing that the green light is still on over here, you would still have had time under my keeping for at least 1 more minute. I am happy that we can save some time, because you did that very well and I appreciate it. I think all chairmen do.

Next I would like to introduce Dr. David Upshall. Dr. Upshall, could you give us your thoughts.

STATEMENT OF DAVID UPSHALL, PH.D., TOXICOLOGIST, CHEMICAL AND BIOLOGICAL DEFENCE ESTABLISHMENT, SALISBURY, ENGLAND, ACCOMPANIED BY PAUL RICE, M.D., HEAD OF PATHOLOGY AND TOXICOLOGY, CHEMICAL AND BIOLOGICAL DEFENSE ESTABLISHMENT, SALISBURY, ENGLAND

Dr. UPSHALL. Thank you, Mr. Chairman.

Dr. Rice and I are providing a joint statement, so he will not give you a separate statement at the end.

Mr. McCOLLUM. Thank you.

Dr. UPSHALL. I am Dr. David Upshall, and I am accompanied by my colleague Dr. Paul Rice. I am a technical manager at the United Kingdom Chemical and Biological Defense Establishment, which is the United Kingdom defense establishment responsible for research upon chemicals and warfare. I have worked at this establishment since 1966, after returning from a post doctoral fellowship at the University of California in pesticide toxicology.

I am a biochemical and inhalation toxicologist and was closely involved in much of the research which contributed to the U.K. report upon CS following the first use of this material in Northern Ireland. My colleague Dr. Rice is a medically qualified pathologist with experience in both human and veterinary pathology, and during his 10 years at the chemical and biological defense establishment he has been responsible for advising the military on the care of chemical warfare casualties, and more recently has been actively involved in advising the British Home Secretary on the use of CS by British police forces.

We are here today to provide expert opinion on the use of CS at Waco. Before proceeding further, it might be helpful to you for me to provide you with a brief resume of CS and its properties. As already mentioned, CS is a chemical first discovered in the United States in 1928 and developed for use as a teargas for the control of civil disturbances in the middle to late 1950's. It has been available commercially and wisely used by law enforcement agencies throughout the world for over 30 years.

Tear gas is perhaps an inappropriate technical description, since it is not a gas, and when used it is generated either as a smoke or a fog. When used, it may be generated from a pyrotechnical device, that is a burning device, or from a solution in methylene chloride, and it was this formulation that was used in general at Waco.

When exposed to CS, human being experience a burning sensation of the mucus membranes of the eyes, the nose, the throat, and to a lesser extent the skin, particularly if moist. This produces prolific tearing of the eyes, mucus secretion from the nose, and salivation from the mouth, and there is intense phaphomasm, and what

that means is an uncontrollable blinking of the eyelids similar to that which we all experience when we get a piece of soap on our eyes.

The effects produced are in general dependent upon the concentration of CS in the air surrounding the individual, and some useful numbers are that 4 milligrams per cubic meter of air, which is a volume of about 39 by 39 by 39 inches, will disabuse most members of a rioting crowd, and 10 milligrams per cubic meter of air will deter trained troops.

However, humans can detect CS in their environment to concentrations about a thousand times lower than this, a slight prickling of the nose. Now, this is true, of course, for unprotected individuals. Those wearing gas masks would be totally unaffected. While it is the concentration of CS in the air that determines the response, it is important to remember that it is the time for which one is exposed to this concentration that determines the dosage to the individual.

You may hear during discussions with this panel the term CT. This is merely the result of multiplying the concentration, the C, by the time, the T, in minutes for which one is exposed, and is a measure of the total exposure of the individual.

I will now move to a summary of our assessment and conclusions of the use of CS at the Waco incident. Using the information provided to us by the FBI and available within the report to the Deputy Attorney General on the events at Waco, we have made an assessment of the concentrations of CS achieved inside the building's complex. To do this, we have made a limited number of assumptions.

Based upon the knowledge that there were four phases of CS insertion from cylinders mounted on the CEV vehicles unsupported by ferret rounds, in total around 380 ferret rounds were used and, in general, were fired in support of the cylinder insertions. We have assumed that one-quarter, that is about 95 of the total number of ferret rounds were fired during each of the CEV insertions. We assume that all of those ferret rounds entered the building, though in reality we know this was not true.

We also assumed a very low rate of air change within the building's complex, about one change per hour, though in reality we know that this also was not true, since most windows had been broken and many large holes had been created in the building walls. The wind speed was also high, I believe it to be up to 28 miles per hour. This higher rate of ventilation within the building would have reduced the concentration of CS below that which we have calculated and would also accelerate the mixing of CS and air inside the building.

Despite these assumptions, we calculate that the concentrations of CS within the building did not exceed around 110 milligrams per cubic meter of air at the time of insertion and would decay rapidly after this time. Though it must be accepted that close to the point of release for a short period of time, it would have been higher than this. To put this in context, this would be the concentration the person would experience approximately 60 feet downwind from a riot control grenade when functioned in the open air.

Our general conclusions are that the concentrations of CS achieved inside the building were not excessive, but the concentrations would have achieved the desired effect of encouraging the occupants to leave the contaminated spaces. Even if the occupants chose to remain in the spaces for the entire 6-hour period between the start of the operation and the commencement of the fire, they would only have accumulated a dosage of CS that was approximately 10 to 12 times less than that estimated to cause serious harm to humans.

Finally, I would like to add that in reviewing this case, both Dr. Rice and I were greatly saddened and moved by the tragic loss of life that we saw, particularly of the children at Waco. However, it is our sincere belief that CS played no direct part in these deaths.

Thank you.

Mr. MCCOLLUM. Thank you very much, Dr. Upshall.

Do you have anything to add at this point, Dr. Rice?

Dr. RICE. Nothing at all, no.

Mr. MCCOLLUM. Well, you have done it in 5 minutes, so I must commend you, as well, for that expeditious handling.

That does not mean, Dr. Marcus, that you have to have a problem. You take 10 minutes if you want, but you are next up and the floor is yours and you are recognized for what time up to 10 minutes you may consume.

STATEMENT OF DR. WILLIAM L. MARCUS, TOXICOLOGIST, ENVIRONMENTAL PROTECTION AGENCY

Dr. MARCUS. Mr. Chairman, members of the committee, I am very honored to be here to present a talk. I am a senior science adviser at U.S. EPA. I am in the Office of Drinking Water. I usually confine my studies to compounds that get into drinking water and cause problems in public water supplies.

I was asked to look into CS gas. I did my usual analysis, because at EPA—I have been there for about 21 years—and my job has been, over that time, to look at the information I could gather about a particular chemical, whether it be animal or human data, analyze the data, and determine what the effects are on people. Try to elicit which particular subgroup is most susceptible and, then, based on all these considerations, determine at what level no effect would be found in the most susceptible subgroup.

As a Government toxicologist, I have no particular axe to grind. I am not a Republican or a Democrat. I am just a Government employee.

There have been some interesting speculations about the flammability of methylene chloride. The Merck Index lists methylene chloride as nonflammable. Now, you can get methylene chloride to burn if the concentration in air exceeds 12 percent. But when you exceed 12 percent in air, you have a sufficient amount of material to cause respiratory depression and death.

Methylene chloride is toxic on its own. It has the following characteristics of all organic solvents. It causes central nervous depression, causes dizziness at high doses. It causes some nausea. It causes confusion, and it can cause people to become disoriented.

CS gas is a very interesting proposition. I was trying to determine, as our distinguished colleague from England, at what con-

centration would there be a problem in people. It came to my notice that CS is approximately three times heavier than air.

The way it works, and I think it was so eloquently explained, is that it is really a very fine powder that forms a suspension in air. In order for it to get into the lungs of people, it has to have a diameter no greater than 8 microns and no smaller than 2.

In the CS–1 and CS–2 preparation, where the solid CS is ground to what they call a microfine powder, those are precisely the dimensions of the particles.

When it is dissolved in methylene chloride, injected in using a ferret round, the material is burst into the air with some heat, methylene chloride leaves it, and you get this fine powder.

The problem that I faced in trying to determine the concentration was, it tends to fall down, and the closer to the floor you get, the higher the concentration is going to be. The irony of that, that struck me, is that the children are the shortest, the smallest, and the most susceptible and they would get the highest concentration.

Children are physiologically different than adults. They have a greater surface area in their lung than do adults. Their respiration rate can be 40 times a minute. An adult's is about 15 times a minute.

The very young children, given exactly the same concentration—not the elevated one we know they must have received—would have taken in approximately 8 to 20 times as much material simply because they breathe faster, they have higher surface area of their lungs, and they absorb it across their lungs at a higher rate.

So the problem with children, as I see it, is that not only are they smaller, but given the same exposure as adults, they get a tremendously increased amount. If we were to use the figures of our colleagues from England, in which he said that there was 10 to 12 times less material available than would cause any harm, that would be sufficient to really make a problem with children because they would have absorbed that much greater amount of material.

This is the same sort of analysis that is done when children are going to be exposed to materials from drinking water, and it is an accepted methodology. It has been published in Drinking Water and Health, and it has been approved by the National Academy of Sciences, so we are not talking about some unusual off-the-cuff analysis.

I am very disturbed at the idea that even with an analysis that shows that it is 10 to 12 times less for an adult, it is the same for children. It is not. I would like you to keep that in mind. Children are different.

Second, the skin of children is thinner. The vessels at the skin are much closer, and the material we are talking about attacks that.

In the beginning, we had an explanation of what the chemical structure of CS gas is. It is malononitrile. But actually, since I don't expect any of the members of the committee are chemists or to know what a nitrile is, a nitrile is cyanide.

This material has two cyanide radicals on it. When it enters the body, the body can metabolize rather easily one of those radicals and free it as a cyanide. The material that they were exposed to,

methylene chloride, produces at normal metabolism carbon monoxide. It doubles, sometimes triples, the amount in the blood.

The irony of this is that children who have fetal hemoglobin, have a greater affinity for the carboxyhemoglobin and, therefore, the ability of their blood to carry oxygen is reduced. The fact that cyanide works on every cell in the body, reducing its ability to utilize oxygen, makes the effect worse. And in some of the papers that have been written, that is the mechanism of action.

In fact, when Nobel Prize winner, Dr. Hamons, in the 1890's, talked about nitriles as that is the mechanism of action, the production of the cyanide radical in metabolism.

I have the honor of working with his son, who also received the Nobel Prize in medicine.

So, I determined that the most susceptible subgroup was, in fact, the children. Now, I brought with me a respirator. This is not a gasmask. This is what is used by people who spray pesticides or who are exposed to chemicals that shouldn't be breathed in.

This is what it looks like. One puts on these two openings a cartridge, and I just brought it along because I wanted the committee to have the opportunity to find out how difficult it is to operate this, and a gas mask is worse.

You must push the material out, here, and you breathe it in through these valves.

[Demonstration of respirator.]

Dr. MARCUS. I am a very vigorous adult. A child would have a tremendous problem with this, and I invite any member of the committee to just try it and see for themselves what I am talking about.

I would like to thank the National Library of Medicine's Specialized Information Services Group for providing me with support so that I could get hold of and present to the committee many of the papers that are available and in the public's literature.

They were very helpful, and they provide this service to many, many scientists and physicians looking for information.

I would also like to thank the committee for the opportunity of talking about the problems of the exposure of toxic chemicals in children and the problems that were faced by our brave people at Waco. Thank you.

Mr. MCCOLLUM. Thank you very much, Dr. Marcus. Without objection, the statements of all of the panelists on this panel will be admitted to the record, as well as the accompanying documentation that you have with you and the tape, I think, that Dr. Uhlig is offering into the record.

We are now ready to proceed with the questions of the panel. I will yield first to Mr. Schiff for 5 minutes.

Mr. SCHIFF. Thank you very much, Mr. Chairman.

Mr. Chairman, just before asking questions, I would like to make a brief observation, and that is, we are now at the point where we have already discussed at great length, and will probably discuss again, I assume, the decision of the Federal Bureau of Investigation to try to end the siege. And we have had a great debate over whether they should have waited longer and could have waited longer or not.

This is now a more focused issue on once the FBI had made the decision to try to end the siege, whether one agrees with that or not, was the use of CS gas in this plan appropriate or was it dangerous, and therefore, we are focusing on a technical issue.

I just want to say that I have received a great deal of information about CS gas from all different sources and I have to say, Mr. Chairman, as a former prosecutor, as a Member of Congress, I am accustomed to witnesses having different recollections of memory of fact, and I am accustomed to witnesses having differences of opinion and judgment.

I had this image that the scientific community, at least, would all be in agreement. We could all, at least, get past this issue, one way or the other, very rapidly, and it appears not to be the case as we have seen from the panel here.

So with that in mind, I trust that perhaps when this panel is over, we will have more of a background as to why there are the differences in the scientific opinion as to whether CS gas was appropriate or not.

With that, Dr. Uhlig, if I may turn to you, sir. You have a military background as well as being a chemist, is that right?

Dr. UHLIG. That is correct, sir.

Mr. SCHIFF. Did your military background involve chemistry, also?

Dr. UHLIG. It did. In fact, in 1982, I spent about 4½ months putting together a document regarding chemical warfare agents for the Air Force, the Air Force Wright Aeronautical Laboratories, in Dayton, OH.

Mr. SCHIFF. Let me come right to the point. Dr. Upshall testified that in his judgment there was no toxicity problem with respect to the use of CS gas in the compound, and I believe that you said that you believe some of the people in the compound, in the vault, were asphyxiated as a result of the use of the gas. Did I understand you correctly?

Dr. UHLIG. You did, Congressman. I would submit that the use of carbon dioxide methylene chloride, these agents would have sunk to the bottom of the building where the vault was used to protect children, in particular. These are suffocating agents, in and of themselves.

Mr. SCHIFF. I wonder if you would expand on that. The CS gas is actually a powder, to be technical, is that right?

Dr. UHLIG. It is. That is correct.

Mr. SCHIFF. Are you saying that this is a suffocating agent, by itself, or are you saying that things produced with it or accompanying it are suffocating agents?

Dr. UHLIG. No, I am saying the material used to dispense it. In this particular case, it was dissolved in methylene chloride. The methylene chloride is an agent that does suffocate.

Not only methylene chloride, but carbon dioxide, and so far in testimony today, I have not heard anyone be concerned about the use of carbon dioxide and methylene chloride. All the methylene chloride would have been a vapor.

Mr. SCHIFF. All right, now, the methylene chloride and the carbon dioxide, was that accompanied with the CS gas in both ways it was delivered?

Dr. UHLIG. Congressman, as far as I can determine, if you look only at ferret rounds and the model 5 ISPRA system, those two were specifically mentioned, and they do, indeed, do use methylene chloride as injection devices.

If there was carbon dioxide used, it would have been with the Mark 5 fogger unit. That is a U.S. unit.

Mr. SCHIFF. Maybe we should take a moment and let me ask you, please, how do you understand that the gas was inserted into the compound? How did the FBI go about doing that?

Dr. UHLIG. Congressman, I got so many doggoned ideas on that, in my investigations. The official version that I have is, they used a model 5 Israeli-designed system to inject the CS methylene chloride mixture. Ferret rounds, in and of themselves, contained 10 percent CS in methylene chloride.

If the calculations are correct, the mixture in the model 5 ejector bottles——

Mr. SCHIFF. Could I interrupt you at this point?

Dr. UHLIG. Sure.

Mr. SCHIFF. Is there a difference between model 5 injector bottles and ferret rounds?

Dr. UHLIG. There is.

Mr. SCHIFF. Would you please explain? And both were used in this situation, right?

Dr. UHLIG. That is correct.

Mr. SCHIFF. How are they different? Could you explain that?

Dr. UHLIG. A ferret round is about 40 millimeters in diameter, typically 37 to 40 millimeters.

You use a launcher. These were fired by Bradley combat vehicles. That is a typical ferret round. The M–5, or the model 5, ejector bottle basically contains roughly 30 grams of CS dissolved in almost 1,100 grams of methylene chloride and 700 grams of a carbon dioxide propellant to expel it.

Mr. SCHIFF. I have to interrupt, because my time has also run out. I believe I will have more time in a little bit.

Dr. UHLIG. OK.

Mr. SCHIFF. But, the bottles were inserted by the tank, moving right up and putting the barrel into the building, is that right?

Dr. UHLIG. That is correct, sir.

Mr. SCHIFF. All right. I just want to ask and make sure that I understood correctly. It is your opinion that the gas, or the substances with it, may have directly caused the suffocation of people in the compound?

Dr. UHLIG. The methylene chloride and the ejectant, carbon dioxide, could have done that, in my opinion.

Mr. SCHIFF. How certain do you feel that it did?

Dr. UHLIG. Oh, dear. With the children, I think there is a good chance. In dealing with probabilities, probably a 60-percent, or .6, .7.

Mr. SCHIFF. Thank you very much. My time is expired.

Mr. MCCOLLUM. Thank you, Mr. Schiff. Mr. Scott, you are recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Parks, the CS gas is subject to some discussions about treaties. Can you tell us some background of where the CS gas is af-

fected by various treaties on military use and what effect that has on civilian use of CS gas?

STATEMENT OF HAYS PARKS, MILITARY LAW SPECIALIST, DEPARTMENT OF DEFENSE

Mr. PARKS. Yes, sir. First, I have submitted a written statement and I appreciate the comments of the chairman that it will be incorporated into the record, so I will not go through the entire long answer for you.

Let me make several critical points, here. First, the United States does not consider riot control agents, and I include CS in that, to be a chemical weapon.

Mr. SCOTT. I am sorry, could you say that, again?

Mr. PARKS. The United States does not consider riot control agents, and I include CS in that, to be a chemical weapon.

Second, the 1993 Chemical Weapons Convention does not apply to law enforcement at all.

Third, the Chemical Weapons Convention is not yet in force, and fourth, the United States is not a party to it.

The riot control agents, as the previous panelists have described, were developed in 1928, as we were developing our chemical weapon deterrent capability. At the time that they were being developed and subsequently, however, there was a concern that the use of a riot control agent on the battlefield might be misperceived by an opponent as use of a lethal, chemical weapon resulting in an escalation in the chemical weapons environment on the battlefield.

Hence, restrictions have been placed on their use on the battlefield, so that the opposing force would not respond in kind. However, riot control agents——

Mr. SCOTT. You don't mean in kind, you mean they might respond——

Mr. PARKS. By a more serious lethal-type chemical weapon. However, riot control agents, as the previous panelists have indicated, have been widely used in law enforcement and it was not the intent in any of the treaties related to the use of chemical weapons on the battlefield to restrict the use of CS or other riot control agents in domestic situations.

Mr. SCOTT. So in this case, it was not a violation of any treaty and whatever treaties there may be, the danger of CS gas was not the reason for it being a violation of the treaties that other countries are parties to.

Mr. PARKS. Well, the particular treaty to which I think everyone has referred, is this 1993 Chemical Weapons Treaty and it is not yet in force.

There would have been no violation of that treaty in the use of CS in a domestic law enforcement situation.

Mr. SCOTT. Thank you.

I am not sure who this question ought to be aimed at, but we have focused all of our attention on CS gas. If we are going to use a tear gas, I use that term generically, what other kind of gases would have been considered? And can you state the relative danger of the other alternatives, to determine where CS would have fallen into that mix? Dr. Upshall.

Dr. UPSHALL. Yes, sir. The two commonly used tear gases, they both are aerosols or smokes, are CN, chlorocetylphenome, and CS, the smoke we are talking about.

CN was used in the First World War and was, by and large, the tear gas that preceded CS. It is about five times more toxic and has generally been superseded by CS in most police, law enforcement agencies throughout the world, for that very reason.

It is still available, I believe, in some police forces.

Mr. SCOTT. Does anybody else want to comment on that?

Is it fair to say that of all the gases that could have been selected, CS was the safest, least lethal, and most appropriate?

Dr. UPSHALL. Unquestionably, yes.

Mr. SCOTT. Does anybody disagree with that?

Dr. MARCUS. I have to disagree, in the sense that I am not sure you want to select a gas to do that.

Mr. SCOTT. Well, if you were going to select a gas, CS would be the preferred choice?

Dr. MARCUS. CS—you have to remember why CS got developed. The British were having a lot of trouble in Cyprus with riots, and the CN that they were using didn't control the riots very well. They used the CN gas. They tried to control the riots with CS, and they managed to do it much more effectively.

So it turns out to be a very effective riot control agent, which means it gives a much better response at a lower concentration, and therefore, I think, the British felt that it was less toxic.

Mr. SCOTT. Dr. Upshall, you just said that it was not as lethal as CN.

Dr. UPSHALL. Let me clarify that.

Mr. SCOTT. I'm sorry?

Dr. UPSHALL. CS was developed because it was safer. It is more irritant. Therefore, the margin between the effective dose and the toxic dose is considerably wider than that of CN, and that is why CN has been superseded by CS.

The safety margin for that compound is considerably greater.

Mr. SCOTT. Thank you. How should it be administered and what factors should you take into consideration, like the wind and other factors that may have been onsite, Dr. Upshall?

Dr. UPSHALL. It depends on what situation you are considering, but if you are considering rioting crowds in the open air, for example, you would be considering the wind because you would want to know which way the wind was blowing and at what speed it was blowing, obviously, or you might miss the target that you were aiming for.

In enclosed areas, you are considering the concentration that you might achieve in that enclosed area, so you have to consider the mass of material that you wish to insert.

Dr. SCOTT. Let me ask you, then, my time is almost up. How well can you predict the reaction that people will have if they are subjected to this gas? There was a fairly tense situation, with the people coming in and shots being fired, and with the kind of person we had in David Koresh. How accurately should we be able to predict the reaction of the people in the compound?

Whoever wants to answer? Dr. Upshall or Dr. Rice.

Dr. RICE. I think it is true to say that above a certain concentration in the air, the signs and the symptoms that people develop in response to the exposure, above a certain point, are not exceeded.

In other words, once you get above a certain concentration, the signs and symptoms don't get any more severe.

That concentration, we believe from studies we have done, is around 10 milligrams per cubic meter. That is the concentration, if you remember, that will deter trained military troops.

Above that concentration, the symptoms persist, but they don't get any more severe.

We can't deny that those symptoms are nasty. They are horrible. They are not very pleasant. But the whole reason for using an agent, such as a tear gas, is to induce these symptoms.

The point being, above a certain concentration, they don't get any more severe in proportion to the increase in the concentration.

Mr. SCOTT. Does Dr. Upshall want to answer the question?

Dr. UPSHALL. No, I agree with what Dr. Rice has said. We are talking here about the irritation produced.

Mr. MCCOLLUM. Thank you very much, Mr. Scott, your time has expired. Mr. Chabot, you are recognized for 5 minutes.

Mr. CHABOT. Thank you. I will yield my time to the gentleman from New Mexico, Mr. Schiff.

Mr. SCHIFF. Thank the gentleman for yielding.

Dr. Uhlig, I would like to return to you, please. As I indicated before, I have been told everything from that CS gas is the mildest form of substance that could be used, if one is going to use a substance in this situation, to the opposite, that it could have potentially lethal effects, at least with the gases that might be included with it.

I want to come back to your testimony about asphyxiation, or possibly, a 60-percent chance of asphyxiation, which is what I believe you said.

I am told that in the studies that have been done on CS gas, that there is no documentation of any lasting injury from the use of that gas, even if its effects could be temporarily unpleasant.

Could you respond to that, please?

Dr. UHLIG. I would be pleased to, Congressman. Amnesty International's report indicated that the excessive use of CS in the Occupied Territories by the Israelis resulted in deaths, both of children and aged people. My colleague here from the United Kingdom has another document before him, that I was able to get hold of as well, that documented some Canadian studies that were made during the Vietnam War, that indicated, again, that there deaths attributed to CS in very high concentrations.

Now, be it in this particular document that the Canadians have furnished and that my compatriot has here, those particular devices were pyrotechnic dispensers. Where the heat of a charge dispenses the CS methylene chloride mixture, or the CS gas as a powdery charge.

I might also add, Congressman, that if we wanted to clean out this room, it would take about the weight of two quarters to completely incapacitate us, at about 10, 15 milligrams per cubic meter.

So, it is not much of an agent at all to chase you out.

Mr. SCHIFF. Mr. Chairman, I would like to reserve the balance of my time, at this time.

Mr. MCCOLLUM. I yield then to Mr. Heineman what time I have left, you have left.

Mr. HEINEMAN. Mr. Chairman, I would like to yield all of my time to the gentleman from New Mexico, Mr. Schiff.

Mr. SCHIFF. I thank the gentleman for yielding. I am sorry for that, Dr. Uhlig. We have certain procedures to follow on the control of time.

Back to you, sir. Let me just ask you, did you complete your statement about the reports?

Dr. UHLIG. I did, sir.

Mr. SCHIFF. Let me ask you this question. As you have just heard, and as you know, the British Government has, I believe, used CS gas extensively in various situations. Do you have any knowledge of reports on the British use of CS gas, that you could refer to?

Dr. UHLIG. The only report that I found and had access to was the one that is laying on the table, right here, from Her Majesty's Stationery Office.

If I could borrow that, please?

This is a Report of the Inquiry into Medical and Toxicological Aspects of CS. In that particular document—oh, let's see, I think you can go through it. It is around page 20 or so. They talk about deaths in Vietnam through the use of these agents.

Now, the interesting observation out of this document, basically, is that you would have to fire 40 to 50 of the pyrotechnic Flite Rite devices into a room, and correct me if I am wrong, 10 by 10 by 8, roughly, in order to cause death.

Mr. SCHIFF. Is there a name to this report that you are referring to, if you know?

Dr. UHLIG. Yes, sir. I just gave it to you.

Mr. SCHIFF. Would you say it again? Or, Dr. Upshall.

Dr. UPSHALL. If I might add, it is commonly called the Himsworth Report, in the U.K.

Mr. SCHIFF. Thank you. Go ahead, Dr. Uhlig, please.

Dr. UHLIG. OK. It said that the use of 40 to 50 projectiles in a room was clearly outside the realm of possibility. And yet, at Waco, 400 or so, approximately 400 of a nonpyrotechnical round, but having about the same volume of agent, were fired into that complex.

That, to me, would suggest that it was excessive.

Mr. SCHIFF. Now, are you aware if any autopsies were conducted on the people who died in the compound, and whether they confirm asphyxiation? And if they do, is there any way to confirm what the source of asphyxiation was, given the fact that there was a fire and other circumstances there?

Dr. UHLIG. I don't know that you can confirm, after the fire situation, that you can confirm how much of the deaths or how many of the deaths were attributed, say, to cyanide generated by the decomposition of CS. CS, in my opinion, decomposes to give ethylene. Ethylene, when it is ingested in the body, would more than likely be converted to ethanol.

The carbon monoxide concentration is in there. Typically, in a fire situation, you have large quantities of carbon monoxide generated.

It would be very, very difficult to ascertain how much hydrogen cyanide in the autopsies was due to CS and how much of it was just due to normal decomposition of materials within the structure.

Mr. SCHIFF. A great deal of emphasis has been placed on the fact that there were relatively high winds blowing in the area of the compound on the day that the CS gas was used. And I believe stated, or at least implied, that the windows had been broken out so that there was a lot of air going through the buildings at that time.

Wouldn't that have dissipated the gas, whichever gas we are talking about, the CS powder or the methylene chloride or the carbon dioxide, enough to reduce them, certainly, to below lethal levels?

Dr. UHLIG. That might be the case. I didn't calculate 110 milligrams per cubic meter, Congressman. I calculated more on the order of about 40 to 50 milligrams per cubic meter of CS gas in the facility. That was a little bit lower than my colleague from the United Kingdom calculated. That was a back-of-the-envelope calculation.

I think we are both hunting, in here. To me, that is anywhere from two to five times more CS than you need to incapacitate a person, even with the winds.

Mr. SCHIFF. So even with the winds, in your judgment, you are saying there was an excessive amount of CS gas?

Dr. UHLIG. In my opinion, it would be, as an observer from the outside.

Mr. SCHIFF. In the vault, which is where you testified to were the bodies of the people who, if they died in this way, most likely did. Do you know what the ventilation in the vault was?

Dr. UHLIG. My understanding is, it was windowless. There wasn't any ventilation in there.

Mr. SCHIFF. So every room in the compound didn't have a window, as far as you know?

Dr. UHLIG. As far as I know, that is correct, Congressman.

Mr. SCHIFF. OK. What information did you receive? Did you ever receive any official information, in looking at this, as to how much CS gas was actually used?

Dr. UHLIG. Congressman, I tried hard to find that and I ran up against a brick wall, quite frankly.

People were very reluctant on the part of the Government to give me any information. I understand that. With many, many people calling in, and I am sure they would say, "Gee whiz, who is this fellow from a rural community in Utah who wants to know and get a firm fix on what we have done?"

I am sorry, Congressman, I didn't get that. The information, some of it, came secondhand as to how much had been injected.

Mr. SCHIFF. My time has expired again. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Ms. Jackson Lee, you are recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, and thank you, gentlemen.

I say this, as we proceed with these hearings, that we are really trying to get to the solution and acknowledge the great tragedy that was experienced. We hope that you gentlemen may be able to cast a lot of light on either what happened or how we can avoid it, prospectively?

I think one of the points that was made in reference to a study, that might give us some pause, Dr. Upshall and Dr. Rice, for concern, would be the Amnesty International study. I would like for you to expand on that as it relates to CS gas.

Is that a document that we can rely upon and what do you think of it? Is it reliable as to this particular gas?

I might add, let me corrected, I notice that Dr. Upshall said it was like a smoke or a fog. So in actuality, not so.

I have another question, but I do want you to take the time that you need. It is a very important point for me.

Dr. RICE. Can I begin my answering?

Ms. JACKSON LEE. Go right ahead.

Dr. RICE. We have looked at that Amnesty International report and it contains testimony to several cases in which people were exposed to tear gas, and that is all the report says, "tear gas."

It doesn't specify which particular tear gas. The problem that we had with that particular report, particularly when you read on to the end of the report, where it says that the Israelis had access to both CN and CS tear gases.

Ms. JACKSON LEE. Say that again, C——

Dr. RICE. CS and CN.

Ms. JACKSON LEE. N, like in Nancy.

Dr. RICE. Yes.

Ms. JACKSON LEE. All right.

Dr. RICE. Tear gases. Is that those people could have been exposed to either one or both.

Now, from what we have already said, we clearly know that CN is far more toxic than CS. That is the first point.

Looking at the actual medical documentation of those cases that were exposed, there is reasonable doubt as to what the cause of death of those people were, mentioned in that Amnesty report.

I think it is not beyond reasonable doubt to suggest that a lot of those people died of cardiovascular disease. OK? Maybe induced by the stress of trying to get away from the gas cloud that they were exposed to.

But I see nothing in that report, whatsoever, that links unequivocally the exposure of those people to CS.

Ms. JACKSON LEE. Was the study done by chemists and physicians, this Amnesty International? Did they retain scientists to do this analysis? To your knowledge? I am not sure of their expertise in that area.

Dr. RICE. Not to my knowledge, but I mean, I haven't really gone into that report that deeply, whether any analysis was done.

The report, on first reading, to me, appears to be a fairly anecdotal one where these cases were counted in a fairly historical way and I saw no evidence of any deep scientific investigation of those cases.

Ms. JACKSON LEE. I will let you answer in a moment, Dr. Stone, but let me say, since we are all fairly here, looking for solutions,

we might then cast great doubt on relying upon that document, if we are trying to solve and/or prevent a future tragedy in terms of the reliance of what it says about CS.

Dr. RICE. What is said in that report and what is said in a lot of these reports that account human exposures to tear gases, particularly, is that it is very difficult from all those reports, and the Amnesty International report is just one of them, what the exposure to the gases in terms of concentration and time was. And those two parameters are, essentially, very important to be able to gauge whether the exposure has been at near lethal level to the gas, or not.

We don't have that information from the Amnesty International reports.

Ms. JACKSON LEE. Let me pursue just a moment with Dr. Upshall, to ask him, in his analysis and in his report—you made the point that, or at least it appeared to me, that individuals would not be immobilized. There might be the tearing that comes from soap in the eye and certainly some other physical ramifications.

I want you in your answer to include the impact on children. I am now at a point, now, where there are large gaping holes inside the building, hopefully debris is not in the way, and an opportunity for individuals to escape. However, there is this smoke and this fog.

Can they get out? Are they still mobile?

I read something here that said they might even be able to do math problems. I am not sure in which document I was reading that, so they might have some mental capacities.

But share with me whether or not, if you were seeking to get out, if there were gaping holes and sunlight coming through, could you get out with the gas, smoke, smog, around you?

Dr. UPSHALL. Yes, I share with you the thought that I couldn't do mathematical problems, if I was exposed to CS. My objective would have been to get out of the environment as quickly as possible.

Ms. JACKSON LEE. That would be my chief concern.

Dr. UPSHALL. There is no evidence, documentary evidence, and that is also true in the Himsworth Report, that children are more susceptible than adults to the sensation of the irritation to CS.

The evidence would suggest that most humans are equally sensitive, regardless of their age.

CS is, in a military context, termed a physical incapacitant, as distinct from what I would call a central incapacitant.

In other words, it has no effect whatsoever on your cognitive functions. It only has an effect on the sensation of pain. It is a peripheral sensory irritant. It irritates the mucus membranes, in that sense.

There is a tight blinking of the eyes because of the irritation to the eyes, but in my experience, and I have been exposed to CS many times, the urge to get out of that environment allows you to peek and move and you know how to get out, certainly. And there is no physical impairment of your ability to leave that environment.

Ms. JACKSON LEE. You are independently associated with the facility in England, is that my understanding?

Dr. UPSHALL. I am a Government employee in the Chemical and Defense, Biological and Defence Establishment, which is now a part of one of the Ministry of Defences. Defence Research Agencies.

Ms. JACKSON LEE. You have no actual link to the Department of Justice or you are not an employee of the Department of Justice?

Dr. UPSHALL. None whatsoever.

Ms. JACKSON LEE. And as I conclude, my understanding, your voice is kind of soft, you are suggesting to me, in the answer that I asked for to the question that I asked, that there was no impairment to the mobility of an adult or child if there were opportunities to escape.

Again, neither one of us being present, but if there was a door open, a window open, or a gaping hole that was going out to an outside area, with that CS inside, people would still, as I understand it, and children, be able to move in the direction of getting out?

Dr. UPSHALL. Correct.

Ms. JACKSON LEE. Thank you very much.

Mr. MCCOLLUM. Thank you, Ms. Jackson Lee.

Mr. Souder, you are now recognized for 5 minutes.

Mr. SOUDER. I wanted to ask Dr. Upshall and Dr. Rice, have you always been Government employees? Have you ever done any work on behalf of the gas manufacturers or any representatives of the gas companies?

Dr. UPSHALL. No.

Dr. UHLIG. None whatsoever.

Mr. SOUDER. OK, thank you. I yield the rest of my time to Mr. Blute.

Mr. BLUTE. Thank you very much. I thank my colleague for yielding, and I want to thank all of the panel for their testimony.

I would like to focus my attention, now, on Dr. Stone, and welcome him as a fellow Massachusetts resident.

STATEMENT OF ALAN A. STONE, M.D., PROFESSOR OF PSYCHIATRY AND LAW, HARVARD UNIVERSITY

Dr. STONE. Thank you.

Mr. BLUTE. You are a distinguished member of the Harvard University faculty in both psychiatry and law, is that correct?

Dr. STONE. Yes.

Mr. BLUTE. My thought, when I read that, was that that combination of disciplines is probably perfect for trying to understand this Waco tragedy.

But having said that, I know you also did a report on behalf of the Department of Justice, is that right, on the Waco incident?

Dr. STONE. Right, right, I did, and I was very critical of the use of CS gas in the presence of children.

Mr. BLUTE. I understand. But before we talk about that, you also were critical of the Government, in general. I want to touch on some of those issues and then move to the CS gas.

You wrote in the New York Times that you found the Government's investigation seriously deficient. Now, does that mean that you read the Treasury report and you found that deficient?

Dr. STONE. I found both reports deficient.

Mr. BLUTE. OK. I wonder if you could comment on where you found them deficient?

Dr. STONE. We don't have too much time, so let me just give you the high points.

I think one of the critical issues that the committee hasn't gotten to is, we had 80 ATF agents come to the compound in cattle cars. We have heard the Branch Davidians described as killers with a deadly ambush.

Now, you might ask Mr. Jamar, when he comes back, because he told me this, that they could have easily killed all of those agents before they even got out of the cattle cars with the kind of weapons they had.

Mr. BLUTE. Fifty caliber.

Dr. STONE. Whatever, right? They had enough weapons to kill all those agents, right? Now, that is the first point.

The second point is, only four agents got killed, and they got killed up on the roof, right?

Now, I want you to think about that. The whole purpose of this raid was to get to the armory, which was supposedly locked on the second floor. Those poor officers are up on the roof, going into an armory that is supposedly locked.

Well, as soon as they get shot at, they knew that the armory is unlocked. Now, whoever is responsible for this in terms of killing agents, or whatever, the sheer stupidity of this is unbelievable.

I don't think you have focused adequately on this fact. Here these agents came. As soon as they were shot at, that meant it was no longer a locked armory.

Now, the second floor, they also knew, was where the women and children were.

So I think the whole presentation of those issues was not adequately——

Mr. BLUTE. You think the reports missed a lot of the important facts and approaches that might have been taken.

Dr. STONE. In my view, yes.

Mr. BLUTE. You also go on to say that the Government never gave us a candid account of what went wrong. That infers something different. What do you mean that?

Dr. STONE. The question in my mind was, after viewing all this stuff and being briefed by the people in the Justice Department and the ATF, why was it necessary to carry out the search warrant in this way?

I was convinced that they had reasonable cause to serve the search warrant. I only didn't understand why they had to do it with 80 armed men, right?

Now, I accept the fact that Koresh was molesting, sexually abusing young girls, but that still doesn't explain why you deal with that situation with 80 armed ATF agents.

I find that ATF has been slippery about that. I would like to know. Why was it necessary?

At times, they said, the ATF would say, that these people were dangerous to their neighbors. I have never seen any evidence that that is so.

Mr. BLUTE. Let me move on, if I could, because we do have limited time, to the question of the gas because you have also been outspoken on the use of the gas.

Dr. STONE. Yes.

Mr. BLUTE. In your report, you talk, as others have on this panel, talked about what the gas can do. Inflame the eyes, nose, and throat; produce choking. You write that it is difficult to believe that the U.S. Government would deliberately plan to expose 25 children, most of them infants and totterers, to CS gas for 48 hours.

Dr. STONE. Right.

Mr. BLUTE. That statement is very strong. I wonder if you would elaborate on that.

Dr. STONE. Well, first of all, totterers and babies cannot run out of a compound, right, because they can't walk themselves, right. So, somebody has to take them out.

Mr. BLUTE. Well, if the parents were immobilized by this gas, the children would be totally defenseless to even getting out.

Dr. STONE. We have to remember, there were lots of babies and totterers, who don't have the ventilatory capacity to use a gas mask. That is the first thing.

Now, the second thing is, I took care of babies who have chemical pneumonia. It is an incredibly debilitating illness. Although we have had lots of talk about this, we haven't heard how it works, and what I am concerned about.

This is an agent which burns mucus membranes, which inflames and irritates mucus membranes. So after a baby breathes it into its lungs, just like a sunburn, right, hours later, then, the lungs will start to have blisters, just like the sunburn comes on your face. And then, the fluid comes into their lungs and they get pulmonary edema.

I spent many nights trying to keep babies alive with just this problem. OK?

The research that the British have done, you will see, that when they keep their animals in the atmosphere long enough, it is not that they die immediately, it is 8 or 10 hours later when they develop pulmonary edema.

Mr. BLUTE. So your final conclusion, here—because we are running out of time—is that, although it may have been justified to use this gas against adults, in a riot or in some other valid, law enforcement matter, it is totally inappropriate, in any case, at any time, to use this gas against children.

Dr. STONE. I think, yes.

Mr. BLUTE. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you very much. We have a dilemma. We haven't had the second bells, yet, but I think that it would be prudent, since we now have a series of votes on the floor, they have been holding for us, to take a recess, before we conclude this panel with other questions.

The joint subcommittees will be in recess until 5 minutes after the conclusion of the final vote on this series. The joint subcommittees are in recess.

[Recess.]

Mr. MCCOLLUM. The joint subcommittees will come to order.

When we recessed, it was going to be Mr. Brewster's turn, and I will yield to Mr. Brewster, 5 minutes.

Mr. BREWSTER. Thank you, Mr. Chairman.

First off, I happen to agree with Dr. Stone that the plan was fatally flawed when the assault started on the compound, back on February 28.

Second, I think the execution of the assault on April 19 was almost equally flawed as to the context to the way it was happening, and I happen to be one who believes that had there been a time frame of weeks—days, weeks, months—allowed to continue, that many of those people would have come out. Maybe not Koresh, but some of the others.

But some of the testimony here concerning the gas seems contradictory to me. Dr. Uhlig, you said that methylene chloride was a flammable agent in the CS gas, and best I remember, the halogen family, most of the halides, at least, are used as flame retardants in many cases, and it would have taken a concentration, a very high amount of concentration of methylene chloride for it to be flammable. Far more than the number of canisters that were used.

Dr. UHLIG. No, sir. The data on this that we ran would not suggest that. The second thing, Congressman, if you get it in a vapor form, I think the flammability limits, the lower limit, is about 13 percent. So, it will go in the vapor form. None of it was puddled.

The second thing I would like to also state is that when I was a young first lieutenant in the military, my secretary was cleaning her typewriter. In those days, of course, we had typewriters that hit ribbons and so on. She was using a preparation with methylene chloride in it. From the time it took me to get from her office to the men's room and back again, she had literally passed out over her typewriter. We got her out of there and were able to revive her, happily.

But the flammability of this stuff, it does burn. There is no question about it.

Now, you are right, carbon tetrachloride is also known as CTE in the industry. It was first used by, I believe, by the German Luftwaffe to put out engine fires.

I will guarantee you that methyl chloride, methylene chloride, and chloroform all will burn.

Mr. BREWSTER. Bromides, fluorides, chlorides, in general, the halogens, are flame retardants, as opposed to flame——

Dr. UHLIG. That is a horse of a different color. As soon as you start looking at bromides and iodides.

Mr. BREWSTER. I have a letter from the industry that says it would have taken 300 canisters of CS tear gas in a room of 840 square feet, as opposed to this building of about 370,000 square feet, to have made a flammable concentration.

Dr. Marcus, I find it interesting that you are testifying in this and that you are an employee of EPA. Do you also testify for plaintiffs on occasion for pay?

Dr. MARCUS. Yes, sir.

Mr. BREWSTER. Is that common among Federal employees, EPA employees?

Dr. MARCUS. Other EPA employees do do that, yes, sir.

Mr. BREWSTER. Is it common? Do most EPA employees do that?

Dr. MARCUS. No, not most.

Mr. BREWSTER. How do they do that in their work schedule? I guess I am curious about that.

Do you have an office in the EPA building here that you work in regularly?

Dr. MARCUS. I do not. But when I was consulting, I did. As you know, Federal employees get 208 hours a year annual leave. I happen to participate in something called flex time and I get 1 day every 2 weeks as a day off. There are also holidays and weekends.

Mr. BREWSTER. Have you ever run into the situation that could be a problem as far as that testimony is concerned, going over extra days, or in a case where it could be indirectly connected with the EPA or the Government?

Dr. MARCUS. First, in order to avoid a conflict of interest, I always explain to the lawyers who try to hire me that if the Government is a party, even peripherally to the case, I cannot appear. Because by definition, I would be serving two masters, and I think that is a conflict of interest.

If it weren't for the fact that I am appearing here for EPA, I would consider this a conflict of interest.

Mr. BREWSTER. You don't have an office at EPA? Do you work out of your home?

Dr. MARCUS. Yes, sir.

Mr. BREWSTER. Do many EPA employees work out of their homes? Why do you not have an office there?

Dr. MARCUS. I was one of several hundred people who were injured in the EPA building because of—I am sure you know—toxic carpets that were put down.

Mr. BREWSTER. No, sir. I don't know. I am new here. I have only been here 4 years. You mean, our Environmental Protection Agency, our agency, put down toxic materials in their own building?

Dr. MARCUS. I guess that is correct. There were well over 600 people who were made ill. Of that, about 10 percent, about 60, work either at home or in alternate spaces, and I am one of those 60.

Mr. BREWSTER. Did you receive any disability out of it, or anything like that?

Dr. MARCUS. I had to go through the entire process that would have awarded a disability, but since I was able to perform my job at home, they decided to allow me to continue to work at the capacity as a Senior Science Advisor.

Mr. BREWSTER. OK. Dr. Uhlig, as one who has some background in chemistry, pharmacology, et cetera, CS gas—does it affect the central nervous system, autonomic nervous system? Is it a CNS depressant, CNS stimulant, nerve synopses? Where does it affect the body, and why is it inconsistent in the way it affects the body?

Dr. MARCUS. That is a very interesting question. It does not affect the central nervous system. It does affect the peripheral nervous system in that——

Mr. BREWSTER. Dr. Marcus, I asked Dr. Uhlig, but go ahead, you are doing well. Go ahead.

Dr. MARCUS [continuing]. In that it attacks the nerve endings and makes them very sensitive. As I explained earlier, part of the mechanism is by the production of cyanide.

Mr. BREWSTER. Wouldn't a lot of things produce cyanide under certain circumstances? The burning of a lot of household materials, would they not also produce cyanide?

Dr. MARCUS. Plastics, in particular, at high temperatures. Some of them, especially those like teflon, will produce cyanide gas, that is correct.

Mr. BREWSTER. Was there a substantial number of people in this fire that had cyanide in their bodies upon autopsy?

Dr. MARCUS. I did not read the autopsy reports, but I am informed that there were levels of cyanide found in those unfortunate people with whom there was enough material left to do that sort of analysis.

Mr. BREWSTER. Thank you. I think my time is expired.

Mr. MCCOLLUM. Thank you, Mr. Brewster. Mr. Clinger, you have 5 minutes.

Mr. CLINGER. Thank you very much, Mr. Chairman. I apologize to the panel for not having been here for all of your statements and the questioning period. So, some of my questions may be a bit redundant. But I think, given the importance of the issue we are addressing here, that is the use of this gas, the quality of this gas, what it does to people or doesn't do to people. I think this is extraordinarily important.

We had testimony in which Mr. Sage pointed out where gas had been inserted into the structure over the period of the raid, in about four or five different places, which would seem to me, at least, to suggest that the levels of CS gas that were injected at that time were very, very high.

Dr. Marcus, can you make any assessment as to the amount or the degree of CS gas that might have been present? How high the level would have been?

Dr. MARCUS. Well, I did submit a report to the committees and I would like to have that made part of the record.

Mr. MCCOLLUM. Without objection, everything you have submitted is made a part of the record, sir.

Dr. MARCUS. Thank you, sir.

I did not attempt to determine the actual concentrations because they depend upon two very difficult things to evaluate. In addition to the amount and the time, they depend upon the temperature and the humidity.

As I said, both methylene chloride and the powder, the very finely divided powder, tend to fall, concentrate in the lower reaches of any place they are used. If they are used out of doors, they would concentrate in the swales. And if they were used indoors, they tend to float down into the lower reaches of the building.

Mr. CLINGER. So what this would suggest is that the concentration of gas would have been much higher for those least able to absorb it, and that would be the children. They would be, presumably, very low to the ground, in that building.

Dr. MARCUS. That is correct.

Mr. CLINGER. I am not sure if this question has been answered or not, but just for my purposes. There has been some dispute

about the flammability of this gas. Has anybody done any testing to determine the degree of flammability or if, in fact, it is flammable?

Dr. UHLIG. Congressman, the only thing I have is the very nonprofessional videotape, right here, that my research assistant, Anita Dingman, and I did at the College of Eastern Utah, and it does burn.

We put it on—initially, we were going to spray the cloth across the flame front of a propane torch. But the material came out in a steady stream, to the point where it made that moot. So what we did, we sprayed it on a piece of cardboard, the cardboard being the supporting agent, then took the cardboard, put it into the propane torch flame as an ignition source—and by the way, a Zippo lighter works just as well—and the material did burn. No question about it.

When it got too hot for me to hold, I tried to shake it to put it out, and you can see that in the video, and threw the piece of material in the back of the hood where it continued to burn for a time.

When the CS, or whatever, the products of combustion or gasification at the time on the cardboard, were completely exhausted, the cardboard extinguished itself.

From that, I believe that it is flammable.

Mr. CLINGER. It is flammable. Thank you for mentioning Zippo lighters. They are made in my district, so I always welcome that endorsement. [Laughter.]

Dr. MARCUS. I would like to answer your question, also.

Mr. CLINGER. Yes, Dr. Marcus.

Dr. MARCUS. I have with me a paper written by a Dr. Danto, D-A-N-T-O, in the American Journal of Forensic Medicine and Pathology, in 1987, called Medical/Legal Challenges. He entitled his paper, "Medical Problems and Criteria Regarding the Use of Tear Gas by Police."

As part of his paper, he gave three cases. Case two talks about when police come to remove an abusive husband, who is intoxicated, and they manage to extract his wife, even though the gentleman pointed a rifle at them.

Less than 24 hours later, the police were recalled because the gentleman, the husband, was yelling and brandishing a shotgun at his neighbors. A coworker of the husband tried to calm him down and entice him out of the home, to get a beer.

The police cut the person off who was a coworker, because he wasn't part of the force, and gave the gentleman a 5-minute deadline to come out, and when he didn't, they lobbed tear gas shells into his home. They lobbed 40 of them at the residence, some of which bounced off the walls.

When he finally became quiet, that is, the husband, the police went in to remove him. The house was already burning and he had died from the exposure.

Mr. CLINGER. I have one more question, I want to get in, if I may, Doctor, before my time expires.

That has to do with, again, there has been conflicting testimony as to the toxicity of this gas. I guess this is what you were leading to, as well.

Mr. Jamar said absolutely not. He characterized it as a relatively benign substance and in no way was it toxic.

In your opinion, is CS gas toxic?

Dr. MARCUS. Yes, there is no question about it being toxic. Every paper that I have read that is independently scientifically produced calls it toxic. The only question is what is meant by that.

These materials are very, very nasty. That is why they are used.

Here is a paper just off the top of the stack, written by Dr. Bezwick, in Human Toxicology, in 1983. He talks about it. He said, "Before going to the aid of the sufferer, you have to decontaminate him. His eyes, the interocular pressure would rise. If he had glaucoma, he might go blind. The skin, they get erythema. And at high concentrations, with more moist conditions, blistering occurs. In the cardiovascular system, as a result of the fright and pain, there is an increase in blood pressure. And if he is a cardiac cripple, you could cause a heart attack. The respiratory system recovers quickly, but as Dr. Park explained, prolonged exposure can predispose to secondary infections. Gross exposure produces edema and death due to asphyxia. These would be exaggerated in people who have asthma and bronchitis. The treatment recommended for these is unchanged."

He talks about the higher nervous system and how that is affected.

Mr. CLINGER. So it really is a total misrepresentation to say that this is not a toxic substance. I guess my time is expired.

Dr. RICE. Could I just clarify some issues in relation to that question, Mr. Chairman?

Mr. CLINGER. Mr. Chairman, can he?

Mr. MCCOLLUM. Certainly. Yes, you may.

Dr. RICE. I think it is true to say that everything that we are exposed to is toxic and nobody would actually argue with that. What is at issue here is, at what level is the substance toxic?

Just to make an analogy, we would all take aspirin for a headache, but if you took a whole bottle of aspirin, in that situation, they are toxic enough to kill you.

I can't see the argument whereby we sit here and we say CS is toxic. Yes, it is toxic, but it is all relative. It depends on how much causes the signs of toxicity.

I think what my last panelist has just said gives you a false impression of what we mean by toxicity. It depends on dose.

Mr. MCCOLLUM. Thank you very much. Your time is expired, Mr. Clinger.

By a previous understanding between both sides of the aisle, I will recognize Mr. Scott, on Mr. Conyers's time, and then, the next round, we will recognize Mr. Schiff, in the absence of Mr. Chabot, on his time.

Mr. Scott, you are recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. To begin with, Mr. Brewster wanted a clarification. I yield 1 minute to the gentleman.

Mr. BREWSTER. Thank you, Mr. Scott.

Mr. Chairman, I have a letter here from the Halogenated Solvents Industry concerning flammability of methylene chloride, that I would certainly like to submit for the record.

Mr. MCCOLLUM. Without objection.

Mr. BREWSTER. OK.

[The letter follows:]

HSIA HALOGENATED SOLVENTS INDUSTRY ALLIANCE, INC.
2001 L Street, N.W., Suite 506A, Washington, D.C. 20036 • (202) 775-0232 Fax: (202) 833-0381

BY FAX AND MAIL

July 27, 1995

Ms. Cherri Branson
Professional Staff
Government Reform and
Oversight Committee
B350A Rayburn House Office Bldg.
Washington, DC 20225-6185

Dear Ms. Branson:

It would be incorrect to state that methylene chloride, if used as a carrier in CS tear gas, could have contributed in any way to the fire at the Branch Davidian compound in Waco. Methylene chloride does not have a flash point, is not flammable, and in fact is frequently mixed with flammable agents to suppress their flammability. Therefore, it is not possible for methylene chloride to have contributed in any way to the fire.

Methylene chloride is a component of many commercial products, including household paints and paint strippers. It is used to make prescription drugs and in the manufacture of film. It has been widely and safely used for decades.

However, under certain extreme conditions where methylene chloride vapors exceed 12% in air there is the possibility that it will burn.

If one assumes that each canister of CS tear gas contained 33.25 grams of methylene chloride, that 300 canisters penetrated the Davidian building uniformly all at the same time, that all the methylene chloride liquid was instantaneously vaporized and dispersed evenly and quickly, that the building was completely sealed from outside air (no windows, doors or other openings), and that the total cubic feet of the building was 370,000,

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then an estimate of the maximum concentration of methylene chloride would be calculated to be 271 ppm or 0.027% (see attached calculation sheet). If there were openings in the building under windy conditions, the methylene chloride levels would have been reduced dramatically. Therefore, methylene chloride levels would have been orders of magnitude below the ignition limit of 12%.

Alternatively, all 300 canisters of CS tear gas would have had to have been thrown into a room 10 ft x 10 ft x 8.4 ft or 840 cubic feet that was completely sealed (no openings) and all the methylene chloride would have had to have been completely vaporized to reach the critical 12% concentration of methylene chloride before it potentially could burn.

Sincerely,

Peter E. Voytek, Ph.D
Executive Director

Mr. BREWSTER. Second, Mr. Marcus, maybe I misunderstood you a moment ago—I thought you said that you worked for the EPA and were here representing EPA? Apparently, immediately after your and my discussion, EPA called very quickly and said that you were not representing EPA here, is that correct?

Dr. MARCUS. I am not representing EPA in the terms of policy, nor can anything I say be attributed to them, but I am here as an EPA employee, as opposed to as a private citizen. I am getting paid on Government time, and I am getting paid by the Government to be here.

Mr. BREWSTER. You are getting paid by EPA to be here, so you are representing EPA, then.

Dr. MARCUS. Well, I can only explain that——

Mr. BREWSTER. You are not on a day of leave.

Dr. MARCUS. That's correct, and they were aware of that and knew about it. I received——

Mr. BREWSTER. OK, so you are here representing EPA, then. The EPA higher-ups told you to be here?

Dr. MARCUS. When I asked them whether I should attend, and showed them that I had received the generous invitation, they said, "By all means."

Mr. BREWSTER. OK, we would like the information on who approved it and that sort of stuff, if we could, because it is our understanding EPA said no.

The second part was, did you say there were 600 of you that don't work in the building, that had toxicity to the carpet, or something?

Dr. MARCUS. No, I said about 10 percent of that, about 60.

Mr. BREWSTER. About 60 of the 600 employees, and all of you work from your homes?

Dr. MARCUS. No, some of us work in alternate work spaces. We were moved out of headquarters into places that were much more tolerable.

There is, I think, somewhere in the neighborhood of between 15 and 30 people who work out of their homes. It varies depending on whether or not they receive disability.

Mr. BREWSTER. And you don't receive disability?

Dr. MARCUS. That is correct.

Mr. BREWSTER. But you do contract out your services on the side, in lawsuits and that kind of stuff?

Dr. MARCUS. I have done that in the past, yes, sir. And I would do it, if I had an opportunity.

Mr. BREWSTER. OK. I am just now told that we have a fax statement on EPA stationery saying you are not here representing EPA.

Dr. MARCUS. What I am saying is, I am here on EPA time, as an EPA employee, but anything I say is not policy nor does it represent their opinions.

Mr. BREWSTER. And your statement is on EPA letterhead, right?

Dr. MARCUS. That is correct.

Mr. BREWSTER. Thank you.

Mr. SCOTT. Thank you. I would like to ask Dr. Upshall and Dr. Rice to just comment briefly on the flammability issue, whether or not the CS gas is flammable. The issue is basically whether or not it could have started the fire, that is what we are looking at.

Do you have a comment to make?

Dr. UPSHALL. Yes. I am not a flammability expert. However, CS is normally generated outside the United States of America by pyrotechnic devices.

In other words, it is a burning grenade, and in that situation, the CS does not ignite. It forms a cloud and a fog off that device, so it does not catch fire in that device which is actually a pyrolysis burning device.

That is the normal method of use in a riot control situation.

Mr. SCOTT. And if it is being disbursed without the pyrotechnics, what happens?

Dr. UPSHALL. When it is ejected from a methylene chloride solution—and I believe from the ferret round—it contains freon. The methylene chloride evaporates and you have a fog of small particles of CS, free of any of the breakdown products that also are associated with pyrotechnic devices.

Mr. SCOTT. Will that cause a fire?

Dr. UPSHALL. No, that would not cause a fire. In fact, it is deliberately chosen, I believe in the United States of America, to replace the pyrotechnic device because your buildings have a very high wood content. They are wood frame buildings and, therefore, in the case of pyrotechnic devices, they have tended to catch fire.

Mr. SCOTT. Thank you. I want to get back to the impact that the gas has on children.

We heard speculation and theories about how it could theoretically affect children. Do you have any studies or evidence to show what actual impact CS gas has on children?

Dr. RICE. I think probably what you are referring to is a paper by Park and Giomono, in which they describe the accidental exposure of a 4-month child in a building to CS.

When that report was written, back in 1972, we believed that that child was exposed to CS, but from a pyrotechnic device. I don't think there is any doubt from that paper that that child suffered, and as Dr. Stone has already said, that child developed a chemical pneumonia of its lung.

I think the important feature to pull out of that paper is that, ultimately, that child survived. We are not sure, at this point in time, whether that exposure was purely due to CS.

As I say, at the time the exposure occurred, it is very likely that that was a pyrotechnically driven CS device. The importance of that is that, from pyrotechnic devices, one would also have exposure to a large range of toxic gases that would also injure the lung, purely from the products of the burning part of the munition.

So I don't think it is at all clear, certainly to us, that one can ascribe that case solely to CS.

Yes, it was a nasty case, and the child was admitted to a hospital in a poorly state. The important fact is that that child eventually survived and, certainly, there is no evidence of any long-term effects on that child that we know of.

Mr. SCOTT. Well, this gas has widespread use. Are there other cases in which we can determine whether or not it has a disproportionate adverse effect on children, Dr. Upshall?

Dr. UPSHALL. I mentioned that case because that is the only real case that we are actually aware of that is reasonably well documented.

As far as we are concerned, the evidence for life-threatening injury to children, specifically, is limited to that case.

Mr. MCCOLLUM. Mr. Scott, your time has expired.

Mr. SCOTT. Mr. Chairman, I think Dr. Upshall was going to answer the question, too. Dr. Upshall.

Dr. UPSHALL. I was just wishing to add that the Himsworth Report, which is the most comprehensive study of CS ever done, in response to the British Government inquiry, does mention a case in Northern Ireland of a child exposed in one of the buildings to CS gas, that was used at the time, in 1969.

The child suffered the effects, was removed from the room, and recovered very rapidly after being removed, which is the normal response that you see when a human being leaves such an environment.

Mr. MCCOLLUM. Thank you, Mr. Scott. Now, I recognize Mr. Schiff, under that arrangement, for 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman. Dr. Uhlig, let me say, since you did not receive all of the information about the actual amount of CS gas used in this particular situation, if we get you that information, would you be willing to recalculate your investigation into this matter, to see if anything changes your conclusions?

Dr. UHLIG. I would, sir.

Mr. SCHIFF. All right. I think that would be fair to you and to the FBI that used the gas, and to everyone, that that be done, regardless of whether it changes your conclusion or not.

Dr. UHLIG. OK.

Mr. SCHIFF. Let me ask, Dr. Marcus, I think that you have clarified that you are an EPA employee, but that you are not testifying on policy matters for EPA here, today.

As an EPA employee, though, I would like to ask you this question. Could you briefly tell us what your background is, by which you are essentially testifying as an expert on the use of CS gas and its effect?

Dr. MARCUS. Well, in the beginning, as they said, I am a board certified toxicologist in general toxicology. Which entails very long and involved tests and a retest every 5 years on the technical knowledge of three different areas. My professional——

Mr. SCHIFF. Would the three different areas include air?

Dr. MARCUS. Yes, I did my original work, in both my Ph.D. and master's, in inhalation toxicology.

Mr. SCHIFF. In inhalation toxicology, all right.

Dr. MARCUS. That is correct.

Mr. SCHIFF. Thank you.

Dr. MARCUS. I would like to give one quick response. There are more materials in the literature talking about children, and I have before me an old report by Cookson and Nottingham, an English man and lady, in which they talk about a physician who treated people who were made ill, that were exposed to CS gas.

He talks about the mortality rate in adults is about 10 percent, while the mortality rate in children is about 90 percent. "I have

only kept accurate records of the numbers of such cases that I have seen since last June. Since then, I have seen seven cases, of which there was one child of 6 years of age, who died; one of 15, who survived; one lady of 40, who died; and four adults who survived."

Now, I don't know enough about this particular gentleman to know precisely what happened, but they are talking about children and being exposed in enclosed area, bunkers or shelters.

Mr. SCHIFF. I understand. Dr. Upshall and Dr. Rice, I believe the British Government still uses CS gas from time to time, is that correct?

Dr. UPSHALL. That is correct, yes.

Mr. SCHIFF. In civil matters.

Dr. UPSHALL. Yes, indeed.

Mr. SCHIFF. All right. Are there any guidelines or policies under which circumstances CS gas should be used, and what I am talking about here is in terms of the environment? That is, is there any policy about it being used outdoors or indoors? Let me just stop there, for a minute.

Dr. RICE. I don't think we have any straight policy. I think probably what you are getting at is the question as to whether CS should actually be used indoors.

Most of the CS that has been used on mainland United Kingdom has been of pyrotechnic devices, but we certainly do have access to other devices. It would be those that would be used indoors, purely because of the risk of fire in an enclosed area.

We have no policy that would prevent the use of CS within an enclosed space. I think the important points to make, with that in mind, is that it is the concentration that one develops in an enclosed space that is certainly very important. One has to have a view to that, and also the time that anybody in that enclosed space might be exposed to that concentration.

Mr. SCHIFF. All right. Dr. Stone, did you want to respond on the question of the use of CS gas, either indoors versus outdoors?

Dr. STONE. Yes, I think the analogy to one aspirin a day is a little misleading because, as the point just made, the problem is duration. Right?

Now, I want to emphasize to you, the plan here was to expose people for 48 hours. OK?

Now, if you look at the research in the Himsworth Report, you will see that even at relatively low or moderate doses, after 40 minutes or 1 hour, the animals will start to die subsequently of the same illness I have been talking about; namely, a chemical pneumonia.

So if you keep the animal in the atmosphere for long enough, it is going to have that reaction. It is not just the dose, it is how long they are exposed.

Mr. SCHIFF. So it is dose, with duration.

Dr. STONE. Exactly. OK?

So long as the child is breathing that, it is burning its lungs. That result will be, eventually, to have fluid in the lungs.

Mr. SCHIFF. Dr. Stone, let me ask you this question. I think it is the obvious question. This gas, at best, is unpleasant. That is its purpose.

Dr. STONE. Yes.

Mr. SCHIFF. And yet, very few people came out of the compound after the gas attack began. Do you have a conclusion as to why that was the case?

Dr. STONE. As you may know, I was on the Attorney General's panel to look into what happened. As you go through the material, I think that the adults had gas masks. Right?

So the adults put on their gas masks as a way of dealing with it. When I spoke to Mr. Jamar, at the time, the real question has always been the children. Did the children have gas masks? How were they going to be protected, if they didn't have gas masks, and how were they supposed to endure 48 hours of gas? OK?

So you have a situation where maybe the adults are protected, but actually the children, who are at the greatest risk, are not protected.

Mr. SCHIFF. And the children, presumably, particularly infants, can't get out by themselves.

Dr. STONE. That is a point, yes.

Mr. SCHIFF. Because I don't think you had the microphone close to you, would you mind repeating again just about dose plus concentration? Would you just mention that again, just briefly, please?

Dr. STONE. Yes. I think the important thing, and I think that you would agree with me, is that if you keep the animals—which the research is done on animals—in the atmosphere that contains it long enough, they all will develop pulmonary edema and die. Right?

So it is not just how much, it is how long, and that is what this calculation that was being described to us earlier is about.

Mr. SCHIFF. And pulmonary edema is what, please?

Dr. STONE. Basically what happens is, this substance is designed to inflame. Its purpose is to inflame tissue, right?

So when you get it in your lungs—your lungs are all this tissue, right—so it inflames it and then fluid moves across it. Just like getting a blister, where you get fluid. So the fluid goes into your lungs and you develop pneumonia, chemical pneumonia, and then you can——

This child that went into the hospital was in intensive care and was in hospital for 28 days with positive pulmonary pressure, and everything, to keep it alive.

Now, if all those babies had come out, where was the equipment to put them all in intensive care? Right?

There are real questions, I have, about the children and their exposure.

Mr. SCHIFF. All right. My time has expired. Thank you.

Thank you, Mr. Chairman.

Mr. MCCOLLUM. Mr. Taylor, you are recognized for 5 minutes.

Mr. TAYLOR. Thank you, Mr. Chairman.

Dr. Stone, I notice in your opening statement you used the words "a careful reading of the ATF report indicates." Is that to lead me to believe you have read it carefully?

Dr. STONE. Yes.

Mr. TAYLOR. In your statement, you took issue with the characterization of the shoot-out at Waco as an ambush, in part because—and I am using your words—"only four agents got killed." How many law enforcement officers, in your expert medical opin-

ion, would have had to have been killed that day to establish that there was an ambush? Would 10 have been enough to satisfy your professional opinion? Would 20? How about all of them?

Dr. Stone, I cannot believe you said that. Would you walk out of the hospital today, and say we only lost four patients that we should not have?

Please, sir, I am appalled——

Dr. STONE. Do you want an answer, or are you just making——

Mr. TAYLOR [continuing]. That a man of medicine would say that. You know, you go on to say that you cited evidence that there was no ambush because of the fact that the Davidians did not open fire as the agents drove out of the driveway. Isn't it possible that the Davidians chose to hold their fire until the guys were out in the open where they had no place to go?

I am truly appalled at so many things you said. You said it was a botched raid, and you made the statement that four agents died on the roof. Again, you said you read the report carefully. The report clearly says that two of the agents were killed on the ground.

Dr. STONE. Yes, yes, I understand that.

Mr. TAYLOR. Dr. Stone, what is your point? Are you on the side of the anarchists? I truly cannot believe that a man of medicine is going to say only four agents got killed. They had children. One of them volunteered for Desert Storm. They left widows behind. They were serving a legal warrant.

Have you listened to the testimony? A legal warrant. They said they were fired at first. A former Green Beret from Vietnam said he had never been ambushed that badly in the whole time in Vietnam, had never been that outgunned.

I will not question your capability, but I will say I am glad you are in Massachusetts and I am in Mississippi, and my family in particular is 1,200 miles, at least, from your hospital.

Dr. STONE. Well, you are entitled——

Mr. TAYLOR. I am going to go on and ask this panel the same question I have asked every panel.

Dr. STONE. You are entitled to your opinion, sir. I disagree with everything you said as——

Mr. TAYLOR. No, sir. I am quoting you. Please tell me, what did you mean, that 10 agents had to be killed or all the agents had to be killed?

Mr. MCCOLLUM. Mr. Taylor, would you let him answer the question, then?

Mr. TAYLOR. Sure. Dr. Stone, you may respond.

Dr. STONE. The important issue and the reason this was an issue for me, Congressman, was to get some idea of what kind of people we were dealing with at Waco. That was a very important thing because the whole task I was charged with by the Justice Department was how do you deal with unconventional groups. All right? They considered this an unconventional group, not just a group of criminals. So one of the things we had to consider was how they behaved in relationship to this raid.

Now, it was explained to me—and I will repeat to you—what Agent Jamar said, and you can ask him. He said that in the tactical advantage the Branch Davidians had, they could have killed

many more agents than they did if they were determined just to kill people.

Now, I am repeating what Jamar told me, which was part of my inquiry, during the time I wrote my report. If you doubt it, ask Jamar.

Mr. TAYLOR. Reclaiming my time, since there is not a great deal of time left, I would like to make two observations. The two gentlemen who said that the doses of gas were nonlethal in the amount that they were given happened to say in their own testimony that they are experts from the British Army. That is what they do best. I would also like to make note that in the opening statement of Mr. Uhlig in paragraph 1, he goes on to say that he is not an expert per se in the use of chemical warfare. I am making not of all of that, sir.

I also want to now ask this panel the same question I have asked every panel, because I am really curious to see what Dr. Stone is going to say. Has anything that you have seen or heard or read justify the murder of four ATF agents by David Koresh and his followers? And, Dr. Stone, I am not a doctor, but it was murder.

Dr. STONE. Well, what is the question you want me to answer?

Mr. TAYLOR. Has anything that you have seen or heard or read justify the murder of those 4 ATF agents and the wounding of 20 more by David Koresh and his followers?

Dr. STONE. No, I do not think that killing people in that situation is justified. But I think that is totally to mislead yourself and the American people about what the critical issues are.

Mr. TAYLOR. Dr. Marcus.

Dr. MARCUS. Anytime gentlemen as brave as these ATF officers in the field proved themselves to die is a tragedy, and there is never an excuse for that. Never.

Mr. TAYLOR. Dr. Rice.

Dr. RICE. I can see no justification at all.

Mr. TAYLOR. Dr. Upshall.

Dr. UPSHALL. I would agree with that. There is no justification whatsoever.

Mr. TAYLOR. Dr. Uhlig.

Dr. UHLIG. No, there is nothing that justifies that.

Mr. TAYLOR. Mr. Parks.

Mr. PARKS. Congressman, I think that is the very difficult issue this committee is wrestling with, and I think that is the decision you have to reach rather than me.

Mr. TAYLOR. Well, no, sir, I am going to turn that around. I am asking for your opinion. You have been called to testify. I do not recall inviting you, and I do not know who invited you. But you have had an opportunity to review the testimony, and I am asking your opinion.

Mr. PARKS. No, sir, I have not had an opportunity to review the testimony. I believe, Congressman, that the Congressman is a former prosecutor.

Mr. TAYLOR. No, sir. I am a former corrugated-box salesman. I take great pride in that. [Laughter.]

Mr. PARKS. I apologize.

Mr. TAYLOR. If you cannot answer a former corrugated-box salesman's question, sir——

Mr. PARKS. And I am saying, as a former prosecutor, that a case of murder could be brought. I am not sure based on the facts I have heard—and I have not heard all the facts in this hearing—that that case could be proved in a court of law.

Mr. TAYLOR. Thank you very much, sir.

Mr. MCCOLLUM. Thank you very much, Mr. Taylor.

Mr. Barr, you are recognized for 5 minutes.

Mr. BARR. Thank you.

Dr. Uhlig, could you very briefly describe a ferret round?

Dr. UHLIG. The ferret rounds that I have seen pictures of, Congressman—and it has only been a picture—is a device that is about, when you take a look between 37 and 40 millimeters in diameter—I have only seen a picture of it, all right? The ferret round apparently is propelled out of a launcher, as best as I can determine, and it is a fairly lethal device. I looked at the manufacturer's literature. Apparently it will go through three-quarter-inch plywood at 75 feet, plate glass at 200 feet. The CS is released at impact, or the solid material, and the CS is suspended in a vapor microparticle aerosol. Dr. Upshall indicated that there was a freon charge in there as well to dispense the CS.

Mr. BARR. Thank you.

As I understand that, Dr. Stone—and I think, Dr. Marcus, you also testified and perhaps Dr. Uhlig—would inflammation in the throat and lungs be consistent with a child being exposed to CS?

Dr. STONE. Yes.

Dr. MARCUS. Yes, sir. I would like to expand on that a little bit.

Mr. BARR. Well, in just a moment. That was just my question.

We have heard a great deal—and I do not know whether you all have followed these—about a young lady named Kiri Jewell, and she came in here, I think it was on the first day of testimony, in a very nice, clean, very pretty dress. Her hair was perfect. Her dad was dressed impeccably and was next to her and provided tremendous support to her. And as I sit here and as I sat there, I have no reason to doubt that what she went through, according to her testimony, was very traumatic. And we all sympathize very much with her.

But I have a picture here of another young girl, nameless, burned so badly. We do not even know her name. She is identified on the medical examiner's photo here as Doe No. 57, a 6- to 8-year-old girl, cause of death: asphyxia, inflammation in throat and lungs.

She is wearing what probably any 6- to 8-year-old girl would wear: some slacks and some running shoes and a pullover shirt, all very badly burned.

She was not able to be here in a nice new dress and with a parent with her because of what happened on April 19, 1993.

I have another report here of Child Doe No. 62, burned so badly that we cannot even tell whether it was a boy or a girl. We do know that she died or he died of suffocation. We also know that this little child, maybe a year old, was clad in a hooded, long-sleeved jacket, a knitted sleeper, a disposable diaper, and a loose-knitted shirt.

This little baby also was not able to be here so that she could be paraded to show what a horrible person somebody might be—

and, indeed, he was a horrible person. But who is going to speak for the Jane Does and the Child Doe that we do not even know what sex they were?

We have heard today from you all about the effects of CS. The other side can parse words and talk about changing a number here or there. But the fact of the matter is, what was injected into those living quarters was, at best, a very painful substance, and it was injected in there knowing full well that there were dozens of children in there.

We have heard expert testimony, and the other side may parse words about this as well, that it is entirely possible that some of the children in there, trying to take refuge in one of the lowest, most secure rooms in the house, may have inadvertently or their parents inadvertently exposed them to death by asphyxiation because of the substance that was injected in there. And it was not a small amount of substance.

The report of the Attorney General says that after they injected all of the CS gas that they had, they sent out for more. They queried every FBI facility in the country from Quantico, Send us more, and they interjected more in there—according to this report, through every window in the structure.

The other side does not have a lot to say about this, yet we keep hearing about Kiri Jewell.

Well, Mr. Chairman, I think it is time we heard a little bit about the Jane Does and the Child Does and the Baby Does and what happened to them. And I think it is a very legitimate question to ask in light of all the information, none of which I believe is secret that we have heard here today, that we certainly should presume that the FBI knew about and that the Attorney General knew about the possible effects of this on children. And I think it is a very legitimate question for this panel to ask, at least on this side, to ask why was this decision made so that hopefully it will never be repeated so we will not have to have pictures like this, which at this time, Mr. Chairman, I would ask unanimous consent be placed in the record.

Mr. McCollum. Without objection.

Mr. Barr. And I am not asking these be placed in the record as official autopsy photos because we do not have the medical examiner, but that is what they are purported to be, and an autopsy report on Child Doe. Hopefully we will hear more about them and not just the Kiri Jewells, because they died as a result of what happened.

Thank you.

[Photographs are in the subcommittees' files.]

Mr. McCollum. Mr. Barr, your time has expired.

Mrs. Thurman, you are recognized for 5 minutes.

Mrs. Thurman. Mr. Chairman, thank you, and at this time I would like to yield my time to the gentleman from West Virginia, Mr. Wise, who has been doing some of his own work on this issue, and we thank him for his time he has spent on this.

Mr. Wise. I thank the ranking member.

I just want to say, in response to the gentleman from Georgia, please, do not misspeak and think that we do not have a lot to say about it. I do. Initially, what I have to say is that David Koresh

was such a coward, sir, that he had those children stay in that compound when he could have let them out, when he could have—no, sir, my time.

Mr. BARR. I am not defending David Koresh.

Mr. WISE. So all this talk about the tragedy that happened, David Koresh is responsible for that child being in that condition that you have described so graphically.

But I would like to just follow up very quickly on that. Dr. Stone, my time is brief, so I need to ask you to help me out on that. On page 15 of your report, you state there is unequivocal evidence that the Branch Davidians started the fire and ended their lives on Koresh's order. Additionally, on page 20 of your report, you state that the Branch Davidians were willing to die defending themselves in an apocalyptic ending or killed themselves and their children. Yet we have heard testimony that the fires that the Branch Davidians died in were accidental.

Would you comment on the assertion that the fires were accidentally set?

Dr. STONE. Let me say this: I was told when I became a member of the panel that there were certain things that were redacted, would be redacted, and there were certain things that one could not speak about.

Now, I——

Mr. WISE. Who told you that, sir?

Dr. STONE. The various people at the Attorney General's Office——

Mr. WISE. Could you just point——

Dr. STONE. I am not talking about——

Mr. WISE. Mr. Chairman, are we instructing witnesses from your side not to——

Mr. MCCOLLUM. No, no. I do not believe so. I believe that is an instruction from the Attorney General's Office.

Dr. STONE. Right.

Mr. MCCOLLUM. He was on their official review team.

Dr. STONE. So it was there. Now, if you tell me that I do not have to adhere to that, I will be glad——

Mr. MCCOLLUM. In front of the committees, I do not think you have to adhere to anything like that.

Mr. WISE. This is already published.

Mr. MCCOLLUM. You are a witness here.

Dr. STONE. OK. Well, even though it was public, I take confidentiality very seriously. I was told not to do it. If you tell me I can do it——

Mr. WISE. Our way, sir.

Dr. STONE. OK. So they told me that they had listening devices inside the compound, that they could not develop and enhance that sound in time to use it, but the night before, they heard various members of the inner circle of the Branch Davidians saying that David has decided that we are to step out onto the sun, that we are—it is going to be really bad, but that is what David has decided. And I accepted that evidence as unequivocal that they intended to start the fire, yes.

Mr. WISE. Thank you.

Dr. Rice, let's talk some about the gas, and I understand you are certainly an expert in that. I think we need to get back to how much gas was put into the compound and whether it was lethal. Have you had a chance to review how much was injected into the compound?

Dr. RICE. We, as you know from our opening statement, tried to calculate on the information that we had available to us not what really happened at Waco, but as realistic as we could, given the information that we had from various sources.

The outcome of those calculations that we have made suggest that some 2,006 grams of CS were deployed and a total of 38,540 grams of methylene chloride were deployed.

We then went on to work out, given certain assumptions which we have already laid out in our statement, as to what the peak concentrations of CS could be within the compound. And our figures suggest that the peak concentration of CS was probably around 100 to 110 milligrams per meter cubed.

We have to say in addition, however, that that is a peak concentration, and given the way that some of the CS was deployed in the building, that is, the advancement of CEV vehicles toward the compound, the opening of the walls of the compound to inject the CS, that in all likelihood the maximum concentrations actually within the building would be a lot lower than that because the ventilation of the buildings would have been much higher than we actually assumed in our calculations.

Mr. WISE. Did your calculations assume one change of air per hour?

Dr. RICE. Yes, indeed, they did.

Mr. WISE. And is that a conservative measurement?

Dr. RICE. That figure we used because we knew from work done for the Hinsworth report that we could actually have—we actually had figures for that rate of change of air in terms of how the CS cloud would actually decay in terms of concentration. That is the only reason why we used that figure.

Mr. WISE. Do those calculations also factor in the 35-mile-per-hour winds?

Dr. RICE. No, they did not.

Mr. WISE. And were those winds a factor, in your opinion?

Dr. RICE. Most certainly a factor, yes.

Mr. WISE. In what way?

Dr. RICE. Winds of that speed going through a building—and I believe that the winds would have actually entered the building through the large holes in the sides through which the CS was injected—that would just greatly increase the ventilation of the building.

Mr. WISE. I will be back, but in my final question, I would ask then, given what you calculated, what percentage of that is a lethal dose, a lethal amount of CS? My point is I think that what you found is that there was far less than what would have been a lethal administration of gas.

Dr. RICE. Sure. The peak concentration we are not saying is low, but certainly if that was breathed for a period of 10 minutes, it would be significantly below what has been estimated to be a lethal dose of CS for an exposed population.

Mr. WISE. And that is without factoring in the 35-mile-per-hour wind?

Dr. RICE. That is without factoring in the 35-mile-an-hour wind, taking into account the volume of the holes that were made in the building, certainly, yes.

Mr. WISE. Dr. Upshall, were you trying to add to that?

Dr. UPSHALL. Yes, if I may. What I would like to add is that we estimated that if someone stayed in that building for at least 6 hours, it would still be some 10 times below what would be an estimated lethal dose.

I would like to take the opportunity to correct a piece of information that is frankly incorrect and has been stated previously. The idea that that cloud would have settled so that persons close to the ground would have had a higher concentration, that is not true. The cloud behaves as a gas would behave in that situation, for that particle size, and there is no settling of such a cloud. It moves as a gas cloud would move. And the settling that would take place would only occur if the concentration was so very high, and this is exceptionally high, that the particles would aggregate and literally precipitate out of the air and fall onto the ground. So as long as those particles are suspended in the air, they would move as a gas cloud would move and mix accordingly. So that information is incorrect.

Mr. WISE. Thank you.

Mr. MCCOLLUM. Thank you very much, Mr. Wise.

Mr. Coble, you are recognized for 5 minutes.

Mr. COBLE. I thank the chairman.

Gentlemen, it appears you all bring an impressive array of credentials to this table, and it is good to have you all here. I know my friend from New England wants to pursue a question, so in the spirit of generosity, I yield my time to the gentleman from Massachusetts.

Mr. BLUTE. Thank you very much, and I thank my good friend for yielding his time.

Dr. Stone, I was kind of shocked at one of our colleague's line of questioning earlier. I thought that you answered it well when you said that the person had misled you and the American people as to the critical issues in this case, what they are. I think that is a pretty good description of what a lot of people have been trying to do in this case, the White House included, and some members of this panel. I also thought to try to link you with an anarchist movement—the last time—my knowledge of Harvard would lead me to believe that there are not many anarchists at Harvard University.

But beyond that, I think that the overreaction to your testimony is linked to the fact that, No. 1, you are independent, you were chosen by the Attorney General herself, presumably because of your academic credentials and your independence to assess what happened in this case. Frankly, you have come down with a different opinion than others have about the Government's investigation.

I want to quote you. You said, "I found the Government's investigation seriously deficient." You said that, "The Government never gave us a candid account of what went wrong." Finally, you welcomed these hearings by saying that, "These investigations should

dispel bizarre conspiracy theories that have flourished in the past 2 years."

So let me just say that I appreciate your testimony, I appreciate everybody's testimony, whether they agree with my conclusion or not, and I certainly would cede their independence and their credentials before this committee.

Let me ask you about something you have said about the FBI, because this is a strong statement also. You said, "The FBI's ultimate strategy was to try to force the Branch Davidians out of the compound by threatening the lives of their children."

Now, was this, in your opinion, a conscious strategy or was it a strategy that happened because they left themselves no other options?

Dr. STONE. A conscious strategy—I think there was one agent who told me that they were hoping to stir up the maternal instinct of the mothers, that when they saw their children suffering, maybe that they would get some sense in their heads, or something like that.

I certainly do not believe that the Attorney General thought that the CS gas was as dangerous as I thought. I certainly do not think——

Mr. BLUTE. But you do think that the information she was relying on was flawed, the information that she got on the CS gas?

Dr. STONE. Now, this is a problem. Here are people who worked in the context of the Himsworth Report who have been testifying, and they are not, apparently, as concerned as I am about the long-term—by that I mean 10, 12, 24 hours of inhaling this gas for a child. I have no doubt in my mind at all that this would cause a child to get pulmonary edema.

But, you see, there are still people who have a different view, and I believe that is the view that the Attorney General was given. I saw the material that she was given, and it was mostly from this British source.

Mr. BLUTE. And you say that you did not doubt—and I do not doubt—that Janet Reno was concerned for the children. I think she was. And you feel that she would never have—she felt justified in ordering the gas attack and that she had understood the risk to them, as I think you and others have indicated, and then you finally say, "I can only conclude that she was misinformed or misled." Which one do you think is more likely?

Dr. STONE. Well, I do not think that she—what was critical to me in terms of my particular report was finding out what had caused her to change her mind. That was absolutely crucial to me, because her first reaction was just right, in my view. You do not use CS gas when there are babies. All right?

So somehow she changed her mind. So I kept trying to find out. What is the information she got that changed her mind?

Now, I was unable to get a coherent answer to that question. I was told she talked to this person you are going to talk to, Salem, Harry Salem. I doubt that he has—well, whatever he will say, you will find out. But I could not understand how it would convince somebody who was concerned about the children.

Mr. BLUTE. Well, thankfully, we are going to have the opportunity to ask the Attorney General herself later on about some of

the information that she relied upon, how she came to her final judgment, and why she changed her mind on the gas issue.

Let me ask you another question, and maybe Dr. Marcus could chime in here also, on the issue of the children and gas masks. Now, it is pretty clearly understood and I think it has already been mentioned that children have difficulty—or is it impossible for children to use a gas mask?

Dr. STONE. They do not have enough ventilatory capacity to pull the air through the mechanism that cleans the air out. If you see that kind of—they just do not have enough.

Dr. UPSHALL. Mr. Chairman, may I possibly make a statement?

Mr. BLUTE. Sure.

Dr. UPSHALL. That is incorrect. That is, frankly, an incorrect statement. During the last war—I was born in 1939—I was issued a British child respirator and carried it to school for several years. Norway and Israel currently produce and manufacture and stockpile respirators for children over the age of 2 years old.

Mr. BLUTE. But do they work effectively——

Dr. STONE. No, no, no. This is just—he and I agree entirely. For children over 2 years, if they have the proper gas masks, then all right. I am talking about children under 2 years of which there were many in the compound.

Mr. BLUTE. And are we aware at all in any of these investigations, yours or the Treasury report, that there were child-sized gas masks in that compound?

Dr. STONE. I never was able to find——

Mr. BLUTE. Mr. Marcus, could you comment on that?

Dr. MARCUS. Yes. As far as I know, there were none. I just want to introduce——

Mr. MCCOLLUM. Dr. Marcus, you need the microphone.

Dr. MARCUS. I would like to introduce for the record the meteorological data for that day. I got this from the U.S. Department of Commerce, National Oceanic, and so on and so forth.

Mr. MCCOLLUM. Without objection.

[Information not received by time of printing.]

Dr. MARCUS. It shows that the winds never got to that kind of velocity. I must commend our British colleagues for suspending the laws of physics.

If he is correct—that is, that you get the disbursement of the cloud, it does not fall to the ground, if you have a situation which is static, that is, there is little to no wind, you would never have to shoot another round. And I do not think that ever happens.

Mr. MCCOLLUM. Well, thank you. Mr. Blute, your time on Mr. Coble's yield has expired.

Mr. Schumer, you are recognized for 5 minutes.

Mr. SCHUMER. Go ahead.

Mr. WISE. Dr. Upshall, I——

Mr. MCCOLLUM. You want to be recognized, Mr. Wise?

Mr. WISE. Yes.

Mr. MCCOLLUM. All right. Mr. Wise, you are recognized for 5 minutes.

Mr. WISE. Dr. Upshall, or Dr. Upshall, I saw you reaching for your button. I think you wanted to respond to those comments.

Dr. UPSHALL. Yes. I just find it unbelievable that the last statement was made. As long as the particles are suspended, they would behave as a cloud. Given enough time, they will aggregate and fall out of the air, but the time frame we are looking at is vastly different from—it is hours that we are talking about for this kind of particle size. The only way in which that changes—and the documentary evidence is in the Himsworth Report. It was actually looked at in a 20-meter-cubed room, which—I am sorry. That is metric—10 foot by 9 foot by 8 foot room. If you fire a 12.5-gram grenade into that room, it will decay to very low levels within about half an hour if you are changing the air within that room about once every hour. That is documented experimental evidence which is in this Himsworth Report.

Mr. WISE. Dr. Stone spoke about his concerns about toxicity for children, and particularly for infants. Given the amount of dosage that you have calculated was in that compound at the time, given the winds that were going through the compound, was there an amount that would have been present that could have endangered even infants? I would address that to Dr. Upshall—or Dr. Rice.

Dr. RICE. Given the concentrations that we have calculated in the decay there, the point is we do not believe those concentrations were sufficient to cause serious harm to adults or children. I mean, we keep pulling on the children here, and I can see why you are doing it. But the main point of the argument, as far as CS is concerned, is that there is no evidence that suggests that children or the elderly or any other extreme of age is any more susceptible to the effects of the gas.

If the concentration is high enough, the effects will be seen in everybody. And, yes, I do not deny that they are unpleasant. But the concentrations that we have calculated in the decay of those concentrations, even if a child was in that environment, which I think is extremely unlikely, for the whole period of the gassing operation, that is, 6 hours, we do not believe those accumulated doses of CS would have led to any serious long-term harm.

Mr. WISE. Dr. Upshall.

Dr. UPSHALL. May I add to that? Because a statement was made earlier which, again, was incorrect. We were relating the dosage to these children, and the only point that was made was the respiratory rate of these children. The factor that decides how much gets into the child is not the respiratory rate. It is the minute volume. It is the amount of air that that child breathes in every minute and not just how fast it breathes.

That determines the dosage to that child, and the minute volume of a child is considerably less than an adult. So it will take in considerably less than an adult for its given body weight.

Mr. WISE. Well, apparently the gas was not all that strong as far as adults went because it did not drive anybody out.

Dr. RICE. Well, I do not think you can actually conclude that. We know or our calculations suggest what the concentration is. That assumes that they were not driven out if they were actually exposed to it. We have no evidence that they were exposed to that concentration for any length of time. They may well have——

Mr. WISE. Pardon me, but my time is going to be running short. Is one reason because it was a very big compound? We are not talking about your 10 by 9 by 8 room.

Dr. RICE. No. I understand.

Mr. WISE. Incidentally, just so the record shows, interestingly enough, one of those children that was found—perhaps it was a child that Mr. Barr was holding up a picture of—was found stabbed. Gas does not stab people, does it?

Dr. RICE. I think if you look at the autopsy records, without exception the bodies of all the children were found in the bunker area.

Mr. WISE. Dr. Marcus, you said that the winds could not have been that high. Do you have any estimate of what the winds were?

Dr. MARCUS. Yes. I actually, as I say, have the meteorological data for that day by hour, and the winds from, let's say, 6 o'clock gusted to 25 knots, 18 knots, 15 knots, 21 knots, 26 knots. The highest gust was 26 knots.

Mr. WISE. At any rate, we are not talking about a static situation.

Dr. MARCUS. Correct. But, remember, this was inside.

Mr. WISE. I understand that. I understand there were holes in this compound after a while, too.

Dr. RICE. Quite large holes.

Mr. WISE. I want to shift just a second, if I could. Dr. Rice and Dr. Upshall, if this is not an area that you feel comfortable talking about, an area of expertise, please let me know. I want to talk about law enforcement's present practices.

Following Waco, is it not still the practice of law enforcement to use CS gas?

Dr. UPSHALL. In the United States, I believe that is the case. What is an interesting comment that deserves to be made is that the Himsworth committee recommended that for internal use in buildings if CS was used, grenades should contain no more than 5 grams of CS. The Waco ferret round, in fact, contains 3.7 grams, which is even less than the Himsworth committee recommended would be the maximum to use.

Mr. WISE. Well, I found it interesting. According to the FBI, 867 State and local law enforcement agencies that were contacted still use or maintain CS gas, 688 maintain it in their inventory. The FBI has used it six times in the last 5 years, not including Waco, three before and three afterwards. A number of law enforcement agencies, local law enforcement, still use CS gas not only in the hostage situation but also as a spray. And I think that ought to be pointed out. Some of what I am talking about are using it as a spray outside. So CS gas still seems to be considered by law enforcement to be a viable usage in certain situations.

I will yield back my time. I yield the balance of my time, whatever might be left, to Mr. Schumer when he is available.

Mr. MCCOLLUM. I think the clock has run out now, Mr. Schumer. The red light is on. You did not quite get back.

Mr. SCHUMER. You are going to bang the gavel, right?

Mr. MCCOLLUM. Do you want to ask a question or not, Mr. Schumer.

Mr. SCHUMER. No. I have got my own time coming.

Mr. McCollum. That is fair enough. I will be liberal enough with it.

Mr. Blute.

Mr. Schumer. It is about time. [Laughter.]

Mr. Blute. Thank you very much, Mr. Chairman.

Let me just ask a few more questions about the gas and then ask some questions of Mr. Parks. It is my view—and I agree with what has been said by Dr. Stone and others, and let me quote Dr. Stone, that, "Given my current information about CS gas, it is difficult to understand why a person whose primary concern was the safety of the children would agree to the FBI's plan." And I think to me that is fairly clear, that in any other type of law enforcement situation, if you had a hostage situation where one kidnapper or two kidnappers had taken an entire family of five or six children, it seems to me that the local police's motivation would be to do anything but to endanger those children. That is my understanding of how law enforcement, at least at the local level, reacts to these types of situations.

I think that perhaps the religious component of the Branch Davidians and a kind of misunderstanding in a group analysis that they were all Branch Davidians so that they were all somehow guilty of something and worthy of gassing and attacking, maybe that was part of the issue there.

Let me turn to Mr. Parks. Mr. Parks, you are an expert in the body of international law relating to armed conflict; is that right?

Mr. Parks. That is correct, Congressman.

Mr. Blute. And you are a member of the U.S. delegation to international conventions at which these types of laws with regard to war are made?

Mr. Parks. That is correct.

Mr. Blute. What are the current treaty obligations of the United States with respect to this CS gas in military conflict?

Mr. Parks. I would stress the point that the Congressman made. The current obligations do not include the 1993 chemical weapons convention which made some slightly different rules with regard to riot control agents. The United States is bound by the 1925 Geneva Protocol, which basically prohibits the first use in war of chemical weapons. And as I stated previously, the United States does not regard riot control agents, including CS, to be a chemical weapon.

Mr. Blute. So from your opinion and in the Department of Defense's opinion, this gas is not prohibited?

Mr. Parks. This is not considered a chemical weapon.

Mr. Blute. Well, we have heard from a number of people that perhaps it is prohibited. I understand that it may be a technical problem there as to whether it is prohibited. You are saying it is not. Others I think have testified that it is prohibited.

Does anybody else on the panel know about that aspect of this, whether our treaties prohibit the use of CS gas?

Dr. Upshall. All I can say is that the United Kingdom takes the same view as the United States. It is permitted for the use in civil disturbances, but——

Mr. Blute. But not military?

Dr. Upshall. Oh, I am sorry. It is used for military purposes as well.

Mr. BLUTE. And there is no prohibition, to your knowledge, of it in the military?

Dr. UPSHALL. I cannot answer that.

Mr. PARKS. Congressman, if I can clarify that, there is a policy restriction on the use of CS in combat for the very simple reason that if you were to use CS on the battlefields and the enemy were to observe its being used, say through binoculars rather than someone inhaling it, or some sort of detector, they might perceive that you have used a chemical weapon and escalate the level of the conflict with chemical weapons.

Mr. BLUTE. So it is more of a tactical issue than——

Mr. PARKS. It is a policy decision.

Mr. BLUTE. A policy decision that chose not to escalate——

Mr. PARKS. Which is contained in Executive Order 11850 that has been in effect since President Ford's time.

Mr. BLUTE. I am glad you cleared that up.

Let me ask——

Mr. PARKS. Could I clarify one other thing?

Mr. BLUTE. Sure.

Mr. PARKS. I would point out that even under the 1993 Chemical Weapons Convention, the policy would be that we can use these in other military operations short of actual armed conflict: peacekeeping operations such as Somalia or Haiti, rescue operations, and things like that. So our policy is quite similar to that for law enforcement operations.

Mr. BLUTE. All right. Let me ask you one other question. In your experience and in your knowledge with the DOD—and I know we have had testimony from a number of people that the military uses this gas to train on a regular basis; is that correct?

Mr. PARKS. I was trained on it 30 years ago, so I would say——

Mr. BLUTE. Everyone that testified, even nonmilitary, said that they were trained on it. My question is: To your knowledge, has any soldier in training ever died as part of that training with CS gas?

Mr. PARKS. I do not have that knowledge. I cannot say.

Mr. BLUTE. Thank you very much for that.

Let me ask a more general question of the panel. We have talked about the fact that there were children inside the compound and that perhaps this is a very, a pretty good reason why not to use it. Let me ask Dr. Rice and Dr. Upshall if you agree with that. In a situation, a law enforcement situation where there are children, particularly younger children involved, would you advise law enforcement not to use this gas?

Dr. UPSHALL. It would depend entirely on the operational situation. It is a balance of risk and consequence. And if the child was deemed to be at greater risk from the consequences of not using CS, I would advise to use it if I felt it would resolve the situation.

Mr. BLUTE. But in this case, this was not a pure hostage situation. We have heard testimony to that extent. Some people think it is a pure hostage situation. Clearly there were opportunities for some of the Davidians to leave the compound on their own, and they chose not to, for religious reasons, because they believed Koresh, for whatever reason. This was not a pure hostage situation. So how do you use CS gas to drive people out of a place that

they do not want to be driven out of, who are potentially innocent, children, some of the women, some of the older people?

Dr. UPSHALL. I cannot answer that. All I can tell you is that the concentration of CS would drive people out of those buildings. The operational decision to use is something I cannot comment on.

Mr. BLUTE. So what you are saying is that the effort to drive the people out of the compound was unsuccessful, obviously, because you believe that if they were successful, the people would have had no choice but to get out of there.

Dr. UPSHALL. They should have moved out of those buildings, but in terms of——

Mr. BLUTE. After 6 hours of building explosion or——

Dr. UPSHALL. The first exposure would have moved them from the room. However, we should clarify what we mean by moving them out. They could have moved to another part of the same building where the CS concentration was lower. They did not need to come out of the building as long as they moved out of that cloud of CS smoke.

Mr. BLUTE. Well, I would like to thank the panel for their testimony. I think it has been very informative and very important. Thank you very much.

Mr. MCCOLLUM. Ms. Lofgren, have you been recognized? I do not think you have been. Would you like 5 minutes?

Ms. LOFGREN. Certainly. Thank you.

Mr. MCCOLLUM. I recognize you for 5 minutes.

Ms. LOFGREN. I have read through the material and the scholarly arguments, but I am trying to—is CS gas what was used on college campuses in the late 1960's and 1970's in the demonstrations? Isn't that the same substance?

Dr. UPSHALL. Perhaps I should answer that purely anecdotally. I was at Berkeley between 1963 and 1966. [Laughter.]

Ms. LOFGREN. So you have personal experience with this substance?

Dr. UPSHALL. I certainly saw what went on. My belief is that at that time CN was being used.

Ms. LOFGREN. But wasn't there a switch to CS late in the 1960's because of the lesser risk?

Dr. UPSHALL. I have no knowledge when the switch was made within the States or when a particular police force in the United States switched from CN to CS.

Ms. LOFGREN. But in law enforcement there was a switch from CN generally to CS because it is less hazardous?

Dr. UPSHALL. That is correct.

Ms. LOFGREN. One of the questions that has been asked to me—and I am pretty sure the answer is there is no such thing, but I promised I would ask it anyhow. Some people have said, well, isn't there some gas that could have been used that, rather than creating an adverse reaction, that would actually render someone unconscious and resolve the situation in that way? Is there any gas that is currently available or being developed that could be utilized in that way?

Dr. UPSHALL. That is the answer in an ideal world, but currently there is no such gas and none being developed, to the best of my knowledge.

Ms. LOFGREN. All right. The final question I have is: If the choice was between the use of CS gas, which is nonlethal, and the next alternative, which appeared to be more aggressive, perhaps arms of some sort, would that not affect your choice on the use of this nonlethal weapon?

Dr. UPSHALL. In my personal opinion, yes, it would, very much so. I would always go for the nonviolent use.

Ms. LOFGREN. Thank you.

I would like to yield the balance of my time to Mr. Schumer.

Mr. SCHUMER. I thank you, Ms. Lofgren, and I thank the witnesses for bearing with us on into the evening.

I would like all the witnesses—I have a few quick questions about this, and there may be nothing involved here at all, but I beg your indulgence. So I am going to ask you a series of six or seven questions. If the answer is no, do nothing. This is for the entire panel. But if the answer is yes, please raise your hand. OK?

I want to ask you if you have ever discussed the testimony you gave today or discussed anything relative to these hearings or were assisted in any way with its preparation by any of the following persons: First, a representative of an organization called Failure Analysis Association. Has anyone talked to anyone from that organization?

You have, sir. OK. I will follow up. For the record, Dr. Stone has raised his hand.

Second, to John Mowali? OK. The record will show no one has raised his hand.

Anyone known to you to be a member of an organization known as the Waco Team? No one has raised his hand.

Mark Barnes. No one has raised his hand.

Jim Warner. No one has raised his hand.

Fran Haga. OK. Dr. Stone.

And any representative of the National Rifle Association? Dr. Stone. OK. So we can take it that none of the other witnesses have talked to any of those people. All right. Thank you. And I will come back to that in a little bit.

My next question is just related for Dr. Marcus. I understand that there is some dispute about whether you are here as an EPA employee or not, and, in fact, I would like to introduce without objection, because your testimony came on official EPA stationery, a letter from Robert—I do not know how to say his name either.

Dr. MARCUS. Purchaseppi.

Mr. SCHUMER. Purchaseppi, who is just simply saying that you are not appearing as a witness on behalf of EPA.

Mr. SHADEGG. Reserving the right to object.

Mr. SCHUMER. Just on somebody else's—if I get an extension of time, that is fine with me.

Mr. SHADEGG. Certainly.

Mr. SCHUMER. Thank you.

Mr. MCCOLLUM. Go ahead.

Mr. SHADEGG. I would simply like to know the date of the letter and the time you received it.

Mr. SCHUMER. July 26, today, because we asked officially after we saw the testimony.

Mr. MCCOLLUM. Would the gentleman yield on his reservation?

Mr. SHADEGG. Certainly.

Mr. SCHUMER. It is really not a reservation.

Mr. MCCOLLUM. Well, you asked that it be admitted. I just want to clarify that I have read the letter, and there is nothing in the letter that is inconsistent with what Dr. Marcus had to say himself about the fact he is not appearing here officially for EPA. They have not said he could not appear here, and they have not said that he did not have the right to appear here and be paid for it while he is here, which is what he said he was. They have simply said he is not representing official EPA——

Mr. SCHUMER. Exactly.

Mr. MCCOLLUM. If this is because his studies or his analysis did not go through the screening procedures, I do not know. And that is fine. Without objection, I will——

Mr. SHADEGG. Continuing my right to object, I believe I have a right to object to find out the date and the authenticity of the letter. It came today. Can you tell me about what time?

Mr. SCHUMER. 7:13.

Mr. SHADEGG. P.M.?

Mr. SCHUMER. Yes, it is 1913, so it must be 7—it is on the fax machine. It must be 7:13 this evening.

Mr. SHADEGG. And that is because you requested it, the minority requested it?

Mr. SCHUMER. That is correct—no. They were watching, and they sent the letter over of their own volition.

Mr. SHADEGG. Thank you very much.

Mr. MCCOLLUM. Without objection, you have an additional minute.

Mr. SCHUMER. It was more than a minute, Mr. Chairman. What happened——

Mr. MCCOLLUM. I have been watching it. It is amazing how fast these things can be done.

[The letter is in the subcommittees' files.]

Mr. SCHUMER. All right. Let me just say for Dr. Marcus—or Mr. Marcus, excuse me. Can we have some water, please? Thank you, Mr. Chairman.

I understand that your work for the EPA's office is in the area of drinking water; is that correct?

Dr. MARCUS. Yes, sir.

Mr. SCHUMER. OK. And have you ever published any scholarly article or anything else on CS gas?

Dr. MARCUS. I have not.

Mr. SCHUMER. You have not. OK. Thank you.

Now, my next questions are for Dr. Rice and Dr. Upshall, and let me just ask you a series of them and let you each answer them seriatim because—and I just want to say one thing. I admire your composure. I can sort of tell by your facial expressions that when some of the other witnesses are speaking, you would like to scream. And your British composure is something that I very much admire and, say, aspire to. [Laughter.]

Just aspire. But let me ask you these three questions. First, was CS gas a good, safe choice to use at Waco under all the circumstances?

Dr. RICE. Yes.

Mr. SCHUMER. Were children or—I will do them all three at once and we can go on a little bit. It is a technique each side has picked up here as a way of extending our time.

Was CS gas a good, safe choice? Second, were children or adults likely to suffocate as a result of the use of CS gas? And is it likely that either CS gas or any agent used as a vehicle for CS gas caused or contributed to a fire? The third one is the most important question because I do not know if that has been asked. It has not been asked while I was here.

Who would like to go first? We will do it in alphabetical order. Dr. Rice.

Dr. RICE. The answer to your first question is categorically yes, it is the safest use, having made the decision that you wanted to use a tear gas.

The second question, can you remind me of the second question?

Mr. SCHUMER. Were children or adults likely to suffocate as a result of the use of CS gas?

Dr. RICE. Based on the analysis that we have done of the situation, the concentrations we believe that were within the compound, no.

And the third question?

Mr. SCHUMER. Is it likely that either CS gas or any agent used as a vehicle—and I wish we could call it CS tear gas. You know, gas, ever since World War II, has a sinister notion to it, and CS gas sounds somewhat eery, mysterious. If we called it CS tear gas, which is what it is, for the audience and people out there in America just catching a snippet, it would sound less ominous because most people are familiar with tear gas. But is it likely that either CS tear gas or any other agent used as a vehicle for CS tear gas caused or contributed to a fire?

Dr. RICE. I am not a fire expert, but from what I understand from the toxicology of CS and methylene chloride, which I think are the main compounds to be looked at here, no.

Mr. SCHUMER. Dr. Upshall.

Dr. UPSHALL. The reply to your first question is unequivocally yes. The second, not at the concentrations used. And, again, I am not an expert on fire and hazards, but at the concentrations used, I believe that not to be the case. In particular, that is the reason why CS was formulated in methylene chloride, to minimize the fire risk.

Mr. SCHUMER. Thank you.

Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you, Mr. Schumer.

Mr. Mica, you are recognized for 5 minutes.

Mr. MICA. Thank you, Mr. Chairman.

Dr. Stone, you participated in some of the review of this document produced by the Department of Justice, I believe.

Dr. STONE. Yes.

Mr. MICA. And you have some pretty outstanding credentials. I am just wondering if you were aware also of some of the previous history in the Government making decisions to use CS gas for children. I have a Department of Justice Crisis Center log from Ruby Ridge, 8 months before the Waco disaster, that shows that the De-

partment of Justice—and this is a copy of it, and I will submit it for the record.

[Information is in the subcommittee's files.]

Mr. MICA. I guess Mr. Larry Potts was in charge, and the comments here are, "The deployment of gas into the residence presents a high degree of risk to small children. There may be a 1-year-old baby inside."

So we had had a history of using this where there were children, in fact. Is that correct? Were you aware of this?

Dr. STONE. Yes, yes.

Mr. MICA. The other thing that will haunt me, I think, if I live to be 100 years old, of course, I am most disturbed by the loss of the agents, and I saw them shot in this situation, the first situation. But none of the folks who were Davidians worked for the Federal Government, but somebody in the Federal Government made a decision to use this gas. I also read from the report—and it says, "It is impossible to know how many of the persons inside the compound inhaled the tear gas because the last gas insertions were made nearly an hour before the fire ended. The lapse of time would have been sufficient for the CS gas to have dissipated from any of the bodies it might have been present in earlier."

I read the autopsy report, and that is really what haunts me, and what Mr. Barr talked about. The autopsy report is page after page of children: a 1-year-old child suffocated in bunker; 1-year-old baby, another one, suffocated. And their remains were so destroyed, they are identified by, you know, Doe 69, 5- to 6-year-old girl, body found in bunker.

It goes on and on. Children, a baby girl, not even the age, pages of this, that a decision of somebody to use this gas—and I will never know, maybe we will never know if they died from inhaling the gas but, nonetheless, they did. Should we have a policy dealing with the Federal Government using this type of gas where there are children involved?

Dr. STONE. Yes, I certainly think we should. I think that if we are nonpolitical about it——

Mr. MICA. Yes.

Dr. STONE [continuing]. And we get out of this adversarial mode, I guess I think our military believes what the people from England are saying to you today. I think that is the line you are going to get from them. I think the military thinks this is a very valuable weapon. They are assured by the police. The British use it to disperse mobs. The police use it now all the time. I think it is very important that we get some good, solid evidence about children. I do not think we have heard any solid evidence about the risk to children.

I think if you would get the National Academy of Science or someone to answer this question so that the FBI—when I pushed them—and I consider Mr. Jamar an incredibly conscientious man. And when I pushed him and pushed him about the children, he practically became tearful, and then he says, well, the Army told me we have the best people.

So I think it needs to be clarified what——

Mr. MICA. We should have a policy.

Dr. STONE. We should have a policy.

Mr. MICA. Particularly with children. I have not even gotten into the women or other folks that may have been innocent.

Dr. STONE. Right.

Mr. MICA. I thank you, and I promised to yield to my colleague, Mr. Schiff. He was gracious to me yesterday. Thank you.

Mr. SCHIFF. Thank you. I thank the gentleman for yielding.

Two things. First, for anyone who suggests that Government employees do not work late, I think that we should proudly refer them to the Environmental Protection Agency. Employees stay in the office past 7 o'clock. At least when there are congressional hearings going on that they might be concerned about.

Let me ask, more seriously, at the very least we know this gas is a heavy irritant. And yet I believe that the plan was to insert this gas for 48 hours. Does anyone on the panel know and can say briefly why was this gas going to be inserted for 48 hours? Why did they expect it would not work right away to get people out? Can anyone explain that? Dr. Stone.

Dr. STONE. It is my understanding that they thought that there were enough gas masks—not taking into account the children—that they might be able to protect themselves, and then after a while, the canister does not work, so you have got to get another gas mask and so forth. So they thought that eventually the place would be so contaminated they would have to come out.

Mr. SCHIFF. Even with gas masks, did they expect people to start coming out in the first hour or 2 hours or 3 hours, if you know?

Dr. STONE. Yes, the plan was that we are going to start injecting the gas at one place. The military told them, they told me, that we should inject it everywhere at the same time, massively in it. And so they developed this fallback plan that they started to inject the gas, if they shoot at us then we will inject it in everywhere.

So then they started injecting it everywhere, and they quickly used up everything they had trying to inject it in, and according to Mr. Jamar, at least, he would never have ordered it if the wind was blowing. That is why the wind blowing is a big question, because it would not have made sense to do this with the wind blowing, but that for the first 2 hours the wind was not blowing.

Mr. SCHIFF. Were they expecting people to come out early?

Dr. STONE. Yes, yes.

Mr. SCHIFF. And people did not come out early?

Dr. STONE. Right.

Mr. SCHIFF. Then they just kept up with their plan anyway.

Dr. STONE. Well, at that point, as they report, they were shot at, and so they moved to this next plan of putting the gas in everywhere.

Mr. SCHIFF. My time has expired. Thank you very much, Mr. Chairman.

Dr. UPSHALL. Mr. Chairman, I wonder if I could add a comment on that.

Mr. MCCOLLUM. You may comment, Dr. Upshall.

Dr. UPSHALL. Just for the record. My understanding of the situation at Waco was that the gas was not put in continuously. It was put in in four discrete shots at about 1- to 1½-hour intervals, and there were gaps in the period, according to our calculation of between ½ an hour and 1 hour, when the gas concentrations or the

CS concentrations would have dropped to very low levels, indeed. So it was a pulsed input, not a continuous input. Just for the record.

Mr. McCOLLUM. Dr. Uhlig, do you want to comment as well for the record? We cannot have everybody doing it, but once we get this started, I think all of you are fair game. Go ahead.

Dr. UHLIG. I would like to make a comment. During the time between the major gas injections, my understanding is that the ferret rounds were continued to be fired, so that would be a continuous injection of the CS methylene chloride.

And if I may make a clarifying point with Congressman Brewster? Congressman Brewster, I understand now where you are coming from. You made the statement about halides being flame retardants. There are two types of chemical compounds, one organic and one inorganic. You are correct. Inorganic halides are flame retardants. However, organic halides do burn like the dickens, with the exception of some of them such as carbon tetrachloride. So there are two different compounds involved here, sir.

Mr. McCOLLUM. Thank you. Dr. Marcus, everybody else has jumped in. You may.

Dr. MARCUS. Very briefly. I just want to say that this material causes adults to vomit when it is in high concentration. It also causes children, even young children, to vomit. If they are small and if they have been knocked down by the gas, or in this case the powder, the chance of aspirating their own vomit is very high. This causes an aspiration pneumonitis which cannot be differentiated, after all is said and done, from what would have occurred if it was CS alone.

Mr. McCOLLUM. Thank you very much.

As I understand it, the minority only has one questioner left right now and wants to pass. I will recognize Mr. Ehrlich for 5 minutes.

Mr. EHRLICH. Thank you, Mr. Chairman. I am going to yield the majority of my time to Mr. Chabot, but I have one question.

Mr. Wise asked a very specific question. Mr. Blute asked a fairly general question. And I want to really rephrase Mr. Wise's question and get, if I can, a very short, concise answer from each of you. I suspect I know what the answer is going to be, but with respect to this entire issue, I am not on any particular side, and we have made that point time and time again. My purpose in this hearing is to come to some definitive conclusions in my own mind so that I can tell the people I represent in Maryland what I think. And that is the reason I am asking this question. There are no sides.

My question is this: In your view—and we have all laid a great foundation for all of you, you are all experts—was it appropriate or inappropriate—and this is a very subjective question. I want the factors to be taken into account, the factors that were present at Waco. Was it appropriate or inappropriate to use CS gas in the levels you understand were utilized in light of the totality of circumstances, knowing, first, infants were present, and, second, the agent was to be delivered, at least to some extent, within confined spaces?

It is a very specific question. I would ask for a very short answer from each of you. Appropriate or inappropriate, Dr. Stone?

Dr. STONE. I think not appropriate.

Mr. MCCOLLUM. Please, before you go on, that could not be heard by anybody.

Dr. STONE. OK. I think it was not appropriate.

Mr. MCCOLLUM. Thank you, Dr. Stone.

Dr. MARCUS. I think it was definitely not appropriate, and I just want to show the committee, this is a book called the Harriet Lane handbook. It is put out by Johns Hopkins University, and it really is put out because pediatrics is a different kind of science. It is a manual of pediatric house officers. And if the gentleman from England were correct, we would need no manual such as this.

Mr. MCCOLLUM. Thank you.

Mr. EHRLICH. Thank you, sir. Inappropriate.

Dr. Rice.

Dr. RICE. It is a tough question to answer. I think if you can create the concentration in the building that has the desired effect, then, yes, it is appropriate. But it is an operational consideration, and it is a balance between risk and benefit, and I do not think there is a simple answer to your question.

Mr. EHRLICH. Thank you, sir. Very honest answer.

Dr. UPSHALL. I would agree entirely with that. It is a balance of risk and benefit, and it is an operational decision at the concentrations that you would require to receive in order to move people out of those buildings.

Mr. EHRLICH. Thank you, sir.

Dr. Uhlig.

Dr. UHLIG. I would say no, judging from a chemical standpoint, and from the reaction of my research assistant when she accidentally got into contact with the stuff. I do not think it is appropriate.

Mr. EHRLICH. Thank you, sir.

Mr. Parks.

Mr. PARKS. Congressman, if you saw my high school and college chemistry grades, you would be assured I am not an expert on how to employ it.

Mr. EHRLICH. I assure you mine were far worse.

Mr. PARKS. And I cannot answer this question.

Mr. EHRLICH. Thank you, sir. I appreciate each of you giving an opinion as to really what is the bottom-line issue with respect to this hearing. Thank you very much.

I yield my time.

Mr. CHABOT. I thank the gentleman.

Dr. Stone, you were asked by the Deputy Attorney General to help prepare this report for the Justice Department; correct?

Dr. STONE. You see, there are two reports. There is the investigative report—I think what you are holding up is the investigative report. That was done by the Justice Department. Then there are these smaller reports which I was asked——

Mr. CHABOT. It was the Justice Department that asked you to prepare the report?

Dr. STONE. Yes.

Mr. CHABOT. And I believe, in fact, that the Deputy Attorney General knew you well because I believe you two were on the Harvard faculty together?

Dr. STONE. Absolutely, yes.

Mr. CHABOT. Now, I am disturbed that in your written statement you report that when you requested documentation about CS gas from the Justice Department, you were given, and I quote, "ambiguous and irrelevant material."

Now, do you think the Justice Department was withholding the information you needed to do the job they had asked you to do? Or, and maybe equally disturbing, do you think that the Department had not done its homework, so that ambiguous or irrelevant material was all they had?

Dr. STONE. I asked, as I said earlier, I was concerned about what information had convinced Attorney General Reno to change her mind. I was told that she had had a conversation with Harry Salem and that had been important. So I said, would you please tell me what she was told?

I then got a document that was incoherent, incomprehensible, and I cannot tell you—I have been asked by many people, well, what did it say? It does not say anything.

Mr. CHABOT. Thank you.

Finally, Doctor, I know you have been here a long time, as we all have, but you have studied this matter intensively at the request of the Justice Department, and you have, I am sure, given it a lot of thought, because a central purpose of these hearings is to make sure that we have learned as much as possible from the mistakes that were made.

Let me ask you what one or two points you think it would be most important for all of us to learn from this terrible tragedy.

Dr. STONE. Well, I think the first most important point ought to be that we have different rules of engagement when police or other law enforcement are dealing with children. There ought to be a red flag go up, and that would say, OK, whatever we do ordinarily, there are different risks and benefits when there are children. That is the first thing we ought to do.

The second thing we ought to do, as Congressman Wise has pointed out, since police all over America are now using CS gas, we ought to find out whether it really harms children in the ways that I think it does. Because if we do not, if even one child more dies from this—and I have read reports of children who died from it—of children who died from it in other countries, and there were actually studies, although it was said that they were not physicians. One of them was my colleague, Dr. Hu, who is a very well trained physician and M.P.H. Right? So I believe this is dangerous to children. I think we should clear that up.

The next thing I think we need to know is this relationship between the Attorney General and the FBI. How does that work? Who in the Attorney General's office is coordinating this stuff with the FBI?

In my own reaction in both situations, I found the people in Treasury, when they first heard what I think is an incredibly incompetent overreaching plan, the first response was they said no. Then they changed their mind. I would like to know why they changed their mind.

It is the same thing with Janet Reno. When she was given this plan of the tank and gas attack, she said no. Then somehow she changed her mind.

So how these decisions were made and how they will be made in the future, it seems to me, is absolutely critical.

Mr. CHABOT. Thank you very much, Doctor.

Mr. MCCOLLUM. Thank you. The time has expired.

Mr. Buyer, you are recognized for 5 minutes.

Mr. BUYER. Thank you, Mr. Chairman.

I would like to move into the Justice report itself on page 266. It discusses an April 14 meeting in the Justice Department, and by this I take it this was also written based on an interview of the Attorney General. At the bottom it says—this is in this conversation with Dr. Harry Salem about the effects of CS gas on children, pregnant women, and the elderly. The last sentence: "She"—the Attorney General—"recalled that although there had been no laboratory tests performed on children relative to the effects of the gas, anecdotal evidence was convincing that there would be no permanent injury." Of course, that is based on the assessment from Dr. Salem, who must have been present, to say here is what the effects of the gas would be.

Would you agree with that statement?

Dr. STONE. I do not agree with it. As I have said repeatedly, I would be concerned that the children would have the long-term risk of pulmonary edema.

Mr. BUYER. The reason I am going to go down the line here real quick because we have Dr. Harry Salem, who obviously—we have got a very tight meeting here. We have a meeting with Reno, with Mr. Hubbell, Mr. Keeney, Mr. Incantro, along with Director Sessions, the FBI representatives Clarke, Groh, Potts, Colson, Rogers, Betz, Chief of the Domestic Terrorism Unit. It is a very small group of individuals, and Dr. Salem.

So let me go down the line here. You do not agree with the recommendation of this doctor that is giving advice to the Attorney General who has to make a very important decision? Mr. Marcus.

Dr. MARCUS. I know Harry Salem, and he works for the military. He has most of his professional life at the Edgewood Arsenal. And I do not think it was appropriate. I assume he shares the same opinions as our gentleman friends from England.

Mr. BUYER. Well, let me go down the line.

Dr. MARCUS. I do not think it is appropriate.

Mr. BUYER. So you disagree with the recommendation he gave the Attorney General.

Dr. RICE. Based on the evidence we have, I will reiterate, we do not have any evidence to suggest that young children or the elderly are any more susceptible——

Mr. BUYER. Wait. Excuse me. Wait a second. The question I had to ask was very specific here because we have the Attorney General recollecting advice that was given to her by Dr. Smith, and that advice was this, sir. She recalled that although there were no laboratory tests performed on children relative to the effects of the gas, the anecdotal evidence was convincing that there would be no permanent injury. Do you agree——

Dr. RICE. On the basis of available evidence, he has a point. I do not see anything to disagree with that advice.

Mr. BUYER. OK.

Dr. UPSHALL. On the basis of the available evidence, I would agree with what his advice was.

Mr. BUYER. OK.

Dr. UHLIG. I would disagree simply because of the fire conditions that existed and the formation of the decomposition products of CS.

Mr. BUYER. Well, that is great. We have the experts disagreeing.

I think it is a really important point. They may disagree here, but I guess now I am confused at the moment because we had, in answer to a question here from Mr. Ehrlich, who went right down the line and all of you went down and said, no, no, no, we should not be using this against children. The two gentlemen here in the middle have said, well, this is really a balancing question, risk versus benefit. Well, if we are talking about a balancing question of risk versus benefit, it throws me then into this realm of I agree with you, sir, it is pretty obvious that the gut reactions from the Attorney General, Ms. Reno, were pretty accurate, did not even really want to do this. Somehow she gets convinced or pressured to do this. I do not know. We will have to find out. We will have to ask her.

But then when she finally makes this decision to go ahead, and she is going to make this decision to use the gas, and it is that risk/benefit analysis, I guess, to use them on children and the elderly, on the 18th she then—she works for somebody, doesn't she? She works for the President of the United States. So then she says, well, geez, I had better tell my boss about this risk/benefit assessment. So then on the 18th, since she has made this decision, she then has to sit down and discuss the plan with the President of the United States, who also, I am sure, could say yes or no to the plan of operations.

Somebody always works for somebody in our Government. We are always accountable to the people. That is what is magnificent about our system of government. And we will have to wait until we get the Attorney General in. But, Dr. Stone, we will move forward on your mystery question, because it is a mystery to me and I think it is a mystery to a lot of the American people because the buck does not stop with Janet Reno. It stops with the President.

I yield back the balance of my time.

Mr. MCCOLLUM. Any other member on our side wish to use that time? Mr. Zeliff, would you like to?

Mr. ZELIFF. First of all, I think we know some information on Dr. Stone and where he is from, and I think a few questions were asked. Dr. Rice and Dr. Upshall, I want to just ask you, were you involved in any consulting with the Justice Department or anybody to do with Waco whatsoever? Or did you just come over here on your own?

Dr. UPSHALL. No, we did not come over on our own. We were obviously invited. The Department of Justice invited us to come.

Mr. ZELIFF. The Department of Justice?

Dr. UPSHALL. That is right.

Mr. ZELIFF. Did they pay your way?

Dr. UPSHALL. There is a contract with the Defense Research Agency, which is the organization for which I work. I am being paid in a proper and formal sense.

Mr. ZELIFF. Are you being paid to give testimony?

Dr. UPSHALL. I am not being paid to give testimony.

Mr. ZELIFF. By the Department of Justice?

Dr. UPSHALL. I am being paid—no. There is a contract with my organization, the chemical defense establishment, for my presence here as a toxicologist. I am giving my time, and that is being formally paid for.

Mr. ZELIFF. OK. I understand. Thank you.

Dr. Stone, just to put it out, you were invited in. Why were you invited to participate in this review, do you think?

Dr. STONE. Here?

Mr. ZELIFF. No, not here tonight, but why were you invited to be a part of the review of what happened at Waco? Why do you think you were particularly chosen?

Dr. STONE. I think I was chosen—I know I was chosen as the last-minute substitute because the person that I had recommended was someone that the scientologist objected to.

Mr. MCCOLLUM. Mr. Zeliff, Mr. Buyer's time has expired. I yield 5 minutes to Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman.

Let me begin by joining Mr. Schiff. I have got to say I thought I had heard it all when the Justice Department was able to flash over here within minutes of testimony of this hearing a press release responding to testimony in the hearing. That happened during the working day. I was impressed. But I will tell you, today we have the Environmental Protection Agency at 19 minutes after 7 p.m. flashing over here, not at your request, not at the minority's request, but on their own because they happen to be sitting back watching TV, watching these hearings, glued to the TV, 19 minutes after 7 p.m. in the evening, and they flash over here a letter. They have got a typist on staff. This is impressive. I mean, this is truly impressive. I am impressed. I will never criticize a Government official again for not working hard, because, clearly, when the Clinton administration——

Mr. SCHUMER. These hearings have accomplished a great deal already, Mr. Chairman.

Mr. SHADEGG. The Clinton administration has apparently everyone so scared of the results of this hearing, I would like to know if anything is going on in Washington other than their officials watching these hearings and responding to what is said.

Having said that, let me follow up on another point. I have got to tell you, I am—Mr. Schumer pointed out that he had great respect for the restraint of the two gentlemen in the middle. I want to point that out. I have got to tell you, I think it is fine that you have restraint. I find it a little difficult that you can be that restrained. I have a 9-year-old and a 13-year-old, and I cannot be that restrained.

I want to clarify something in the record. Mr. Barr here next to me held up these two autopsy photos, which are ghastly. I am sorry the press was not here. When Mr. Schumer holds up things like this, the press arrives and takes a gazillion pictures. It is called a photo op. But moments later——

Mr. SCHUMER. Another conspiracy at work, Mr. Shadegg.

Mr. SHADEGG. I am trying again myself. Moments later, one of my colleagues on the other side elicited a question that, in fact, one

of these two children had a stab wound. I have reviewed—and I think it is important for the record to show—one is Baby Doe 62, the other is Baby Doe Girl 57. I have just reviewed both the Department of Justice report, which lists the cause of death, and the autopsy that we have, and neither one of them lists a stab wound.

Mr. WISE. Would the gentleman yield?

Mr. SHADEGG. So I think the statement, the question that was—that either one of them died as a result of a stab wound was disingenuous.

Mr. WISE. Would the gentleman yield?

Mr. SHADEGG. I will not.

Mr. WISE. Just so I can clarify that.

Mr. SHADEGG. You can do that on your time.

Mr. WISE. I did not say that those pictures did. I said the record shows that a child——

Mr. SHADEGG. Can I have my own time, Mr. Chairman?

Mr. WISE. Oh, you do not want the facts. I understand, sir.

Mr. SHADEGG. I want the time—I would like my time.

Dr. Rice, you characterized the Amnesty International report on the Israelis as anecdotal. Have you read it?

Dr. RICE. Yes.

Mr. SHADEGG. One of the anecdotes deals with the death of a 5-day-old baby, does it not?

Dr. RICE. I believe so, yes.

Mr. SHADEGG. And, indeed, it begins with an introduction that says they have received the names of 18 babies under the age of 6 months, all of whom died as a result of this. And you are going to dismiss that because that is just anecdotal; is that right?

Dr. RICE. No. The point I was trying to make is that that report does not actually say what those babies died of. They refer to tear gas. It could be CS. It could be CN. And I think there is a very distinct difference.

Mr. SHADEGG. I only want to point out that the testimony that was just brought out from the Justice Department report reveals that the Attorney General recalled that since there had been no laboratory tests performed on children relative to the effects of the gas, she relied on anecdotal evidence. I presume she was not given this anecdotal evidence of the death of these children.

Dr. RICE. I cannot comment on that.

Mr. SHADEGG. I am sure you cannot.

I also heard you say earlier that when you did all these analyses, it was not what really happened at Waco. And I heard your colleague, Dr. Upshall, say that what should have happened was that people should have left the compound. But they did not leave the compound.

I want to go into a question that troubles me. My wife and I have been married for many years. She has a different tolerance to medicine than I do. When I get a headache, it takes me a minimum of three aspirin, sometimes more, to knock that headache down. If my wife takes more than one aspirin, she becomes ill. I can tolerate Advil. I can tolerate two or three Advil at a time. My wife takes one Advil, and she is violently ill. It is too much for her.

I have experienced that with other friends. I have a good personal friend who, if he drinks a cup of coffee, he immediately goes

into the shakes and cannot sleep for at least 12 or 14 hours. I have watched him. It gets to him. He cannot tolerate it. Now, I drink that stuff by the bucket load every day.

You have testified here today very dispassionately about how there is no evidence as to how this affects women and children differently. I want to talk about children. What studies have you done on children between the ages of, say, 14 and 6?

Dr. STONE. Personally, none.

Mr. SHADEGG. Dr. Upshall.

Dr. UPSHALL. No studies have been done on children from 14 to 6.

Mr. SHADEGG. So we do not know.

Dr. UPSHALL. I would add to that you do not know, but the reports that you have in front of you, the ones that you have just been pointing out, also do not know because all they are quoting is anecdotal information that has come from an exposure that took place in other countries. And the information was gained after the event, so that the exposure agent was not known, the dose of the exposure agent was not known, and the sequelae were reported——

Mr. SHADEGG. Precisely my point, Dr. Upshall. We do not know. We do not know the effects of this gas on children. What we do know, I think we know, I think the record will reveal, is that there were gas masks in that compound for adults. There were no gas masks in that compound for children. Indeed, as I understand it, it is impossible to create a gas mask for a child under the age of 2. And, in fact, while I heard you testify that the Israelis have created them for children 2 and over, there is no gas mask for a child under 2. But we do know, we do very much know, that those children under 2 were going to be exposed to this gas and the children between 2 and 14 or 2 and 6 who could not wear a gas mask were going to be exposed to it, and we have no studies, not one study, on its effect on children. Not one. We do not know whether it will affect them the way an aspirin affects me or whether it will affect them the way it affects my wife. And in that circumstance, I find the use at least scary when I have a 13-year-old and a 9-year-old.

Thank you.

Dr. UHLIG. Mr. Chairman, may I make a comment?

Mr. MCCOLLUM. You may. You may respond, Dr. Uhlig.

Dr. UHLIG. I agree with the Congressman's statement because in going through the various biochemical processes of the ultimate toxicity, it really is highly dependent on metabolism and disposition factors. And these factors are species, sex, genetic factors, environmental, stress on the individual, their diet, their age, pathological conditions, tissue and organ specificity, dose, and enzyme induction inhibition. So that is what gives you a different response to medicine than your wife would have. And it may account for differences in people's response to this particular agent.

Mr. MCCOLLUM. Thank you, Dr. Uhlig, for those comments.

Mr. Bryant, you are recognized for 5 minutes.

Mr. BRYANT of Tennessee. Thank you, Mr. Chairman. I will yield my time to my colleague from New Mexico, a former prosecutor, Mr. Schiff.

Mr. SCHIFF. I thank that from another former prosecutor.

Dr. Stone, you were asked a number of questions about who you may have talked with about this situation. I would like to clarify. Would you say exactly how you originally got involved in the Waco tragedy and who or what agency got you involved?

Dr. STONE. How I originally got involved was somewhat reluctantly. I accepted the appointment in the Deputy Attorney General's panel to investigate Waco.

Mr. SCHIFF. So you were a member of the official panel of the Department of Justice to investigate the Waco situation?

Dr. STONE. That is correct.

Mr. SCHIFF. And you were selected by the Office of the Attorney General for that position?

Dr. STONE. That is correct.

Mr. SCHIFF. This Attorney General's Office?

Dr. STONE. That is correct.

Mr. SCHIFF. Thank you.

Let me turn to——

Dr. STONE. Could I just say one other thing?

Mr. SCHIFF. Yes, please, sir.

Dr. STONE. Because Congressman Schumer asked me about these, if I ever talked to these two people, these two groups, you know, and I just wanted to say that the people I told you, one called me on the phone. And the other I just met in the hallway.

Mr. SCHIFF. For the very first time?

Dr. STONE. Yes.

Mr. SCHIFF. All right, thank you.

I would like to go to Dr. Upshall and Dr. Rice.

I would like to ask at least in general terms, do you agree with Mr. Stone that possible side effects or direct effects, I should say, of CS gas or whatever might be contained with it, is a matter not only of concentration but of concentration plus duration? Do you agree with that statement, Dr. Upshall?

Dr. UPSHALL. Yes, and the earlier statement of Dr. Stone included a misunderstanding of that concept. It is, the dosage is determined by the concentration to which the individual is exposed multiplied by the time to which that individual is exposed. That gives a measure of the total exposure and the amount that that person then inhales is a measure of the total dosage.

Mr. SCHIFF. So you are in agreement then—and I am sorry if there was any misunderstanding—that the effect is a matter of concentration times duration?

Dr. UPSHALL. Let me just clarify that. There are two things that we are talking about here. One is the irritation and the irritation that you get on exposure to CS is a function of the concentration. The dosage that you get is related to toxicity. And it is the duration for which you are exposed to that which is a critical factor here.

Mr. SCHIFF. So they are both important factors?

Dr. UPSHALL. One is more important for the irritation that you get, the other is more important, the determining factor in terms of the measurement of the toxicity.

Mr. SCHIFF. And the more important factor for toxicity is duration then, if I understood you right?

Dr. UPSHALL. Duration and concentration because if the gas is not there you can be exposed for hours and nothing happens.

Mr. SCHIFF. Well, it is the two together is all I am trying to get at.

Dr. UPSHALL. Absolutely.

Mr. SCHIFF. All right. Now, as you know, there was a plan here to pump CS gas into a building for 48 hours. I would like to know if, in the United Kingdom, either of you who are professionals in this type of chemistry and inhalation toxicology, can think of an example of where there was a comparable plan by the British Government to pump CS gas into a building for 48 straight hours, under any circumstances?

Dr. UPSHALL. No.

Mr. SCHIFF. Dr. Rice, you cannot think of any?

Dr. RICE. No.

Mr. MCCOLLUM. Dr. Upshall, can you?

Dr. UPSHALL. None at all.

Mr. SCHIFF. Can you think of an example, regardless of the amount of time that the gas was going to be put into a building, where CS gas was used by the British Government knowing there were children inside a building, Dr. Rice?

Dr. RICE. I cannot think of any; no.

Mr. SCHIFF. Dr. Upshall.

Dr. UPSHALL. I am sorry, I cannot answer that, I do not have the knowledge.

Mr. SCHIFF. Well, I just want to observe that both of you gentlemen are testifying and as professionals and as experts but in a situation that I have given two factors, at least, the use of the gas for 48 hours, at least as a plan inside a building and when children were also inside a building regardless of whether it was 48 hours or 48 seconds, and neither of you has an example that you can, at least, think of here where your Government has chosen to do either of those two things.

Let me ask another question about the use of CS gas in the United Kingdom. Has anything happened to, I do not know if it has, but has anything happened to cause the United Kingdom to change its use of CS gas over the last several years? Would they still use it now in all cases as they used it, say, 10 years ago or has any modification in policy occurred?

Dr. RICE. I know of no modification of policy but I am not really experienced in that area of Government policy.

Mr. SCHIFF. Dr. Upshall, are you aware of any——

Dr. UPSHALL. I would agree with that entirely. We are not knowledgeable in the area of Government policy but we are not aware of any change.

Mr. SCHIFF. OK. Dr. Stone, I believe that you were really commenting at the very beginning, and now we are at the very end, on some other observations that you made about the handling of the Waco situation.

And there was not time to get into that in any detail. I am going to ask you to come back to that when you are asked about what you saw and what you would do differently? Is there anything you want to add at this point?

Dr. STONE. Well, you know, from my perspective, I was concerned about this point about who were the people inside the compound and what were they like.

And I just wanted to say in terms of this whole thing that one of our Harvard Law School graduates was inside the compound, a man by the name of Wayne Martin, an African-American. There were many people of color in the compound because the compound was drawn from Seventh-day Adventists. And so they had come there because they were impressed as David Koresh's people have said. But what they have not said is, and I was very disturbed at the testimony of the FBI, because I feel very strongly that for them to keep insisting that David Koresh is an antisocial personality is totally un—it sort of does not fit the facts at all.

David Koresh, as a young man, as a boy would spend hours memorizing the Bible. That is not——

Mr. SCHIFF. My time is up.

Dr. STONE. OK.

Mr. MCCOLLUM. Let me just ask you to clarify one thing, though. You mentioned people of different races. Would that be relevant in this situation? I ask you that as a physician.

Would it matter physiologically?

Dr. STONE. I do not think that matters at all.

Mr. SCHIFF. Thank you, Mr. Chairman. I yield back.

Mr. MCCOLLUM. Mr. Schumer, you are recognized for 5 minutes.

Mr. SCHUMER. Thank you, Mr. Chairman.

And I guess the questions I want to ask, I just want to wrap this matter up with Mr. Stone in terms of who visited him, who called him. I was surprised to see you raise your hand, Dr. Stone.

Who called you, of the three? You said you would have contact with failure now. Why do you not tell us each one. First, Failure Analysis Associates, which is a group of——

Dr. STONE. I met someone outside during the intermission who introduced himself to me.

Mr. SCHUMER. OK. And what about Fran Haga, is she the person who called you?

Dr. STONE. I think that is a woman who called me——

Mr. SCHUMER. When did she call you?

Dr. STONE. Long before the hearings.

Mr. SCHUMER. How long before?

Dr. STONE. Maybe 2 months ago. I know it was before I went——

Mr. SCHUMER. And what did she say, how did she identify herself?

Dr. STONE. She said that she was doing research.

Mr. SCHUMER. Did she say who she was working for?

Dr. STONE. She said she was doing research for the committee.

Mr. SCHUMER. For the committee?

Dr. STONE. Yes. And she associated herself in some way with the committee.

Mr. SCHUMER. I see. Did she ever mention the National Rifle Association?

Dr. STONE. She told me she was a lifetime member of the NRA.

Mr. SCHUMER. But working for the committee, you are clear on that?

Dr. STONE. She said she was——

Mr. SCHUMER. Doing work for the committee, your words?

Dr. STONE. Yes.

Mr. SCHUMER. Thank you, that is very illuminating.

And then I mentioned the National Rifle Association, that was the third one you raised your hand for.

Dr. STONE. I thought I raised my hand about two. Those were the——

Mr. SCHUMER. You raised your hand about three, Failure Analysis Associates, Ms. Haga, and the National Rifle Association.

Dr. STONE. Well, that is because Ms. Haga was those two in one.

Mr. SCHUMER. I see, OK, you learned that. Because she was a lifetime member does not mean she is working for them necessarily.

Dr. STONE. Oh, no.

Mr. SCHUMER. OK. You wanted to just be sure and I appreciate that.

Dr. STONE. I did not want to leave anything out.

Mr. SCHUMER. No stone unturned.

Dr. STONE. Unturned, right.

I have heard that many times, Congressman. [Laughter.]

Mr. SCHUMER. In any case, OK. Please, we heard even a worse joke from the staff. I guess my next, I would just like to make a comment here and this is my own opinion and as usual it is somewhat pointed, let us say.

That is that you know we have heard many in modern-day America decry moral relativism which means that every opinion has equal weight, even those that are morally superior to others.

I find this panel an example of that and I am saddened by it. With no offense to any members of the panel, we have two people here, Drs. Rice and Upshall who are world experts, renowned throughout the world in this subject of CS tear gas.

And we have two people, Dr. Uhlig and Dr. Marcus, very capable people in their own right, who, by their own admission, are not experts in this subject. Neither has published a single article on the issue of CS tear gas.

And then we have conflicting opinions and we find that first the way the panel is set up, all the opinions are equal. The years of study and research that Dr. Rice and Dr. Upshall did is equated to the, in my judgment, less studied opinions of Dr. Marcus and Dr. Uhlig. And then we find, very discouraging and disturbing, without putting a value on it, that most of those on one side of the aisle choose to believe Dr. Marcus and Dr. Uhlig and just about everyone on our side chooses to believe Dr. Rice and Dr. Upshall.

One of the staff people commented to me on making that point that he loses faith in the real factfinding ability of Congress. Because, in my judgment and I think in the judgment of most objective people, the opinions of Rice and Upshall would have more weight than those of Drs. Marcus and Uhlig on this subject. And moral relativism, welcome to this hearing. I yield my remaining time to Mr. Wise.

Mr. WISE. I thank the gentleman. I am going to ask the panel, following up on the gentleman's remarks, I am going to ask the panel to respond very quickly.

Dr. Stone, you are a psychiatrist as I understand it, you are not a toxicologist, are you?

Dr. STONE. No, I am not.

Mr. WISE. And you have published no articles in that regard?

Dr. STONE. No.

Mr. WISE. Dr. Marcus, I believe that has already been established that you are not a toxicologist, is that correct?

Dr. MARCUS. Oh, yes, I have a Ph.D., in pharmacology. I am a toxicologist as designated by the U.S. Environmental Protection Agency and I have been their toxicologist for 21 years.

Mr. WISE. OK, fine, and no, I am happy to have you put that in the record in writing but what articles have you published on CS gas?

Dr. MARCUS. Oh, I am not an expert on CS gas.

Mr. WISE. Fine, and are you on the Safe Water Drinking Act enforcement or in the——

Dr. MARCUS. Oh, I do not do any enforcement, no.

Mr. WISE. Well, that is good, because the people on the other side are going to cut the enforcement budget about one-third and you will have a lot of time to watch TV in the Clean Water Act.

Dr. Upshall, Dr. Rice, you are both toxicologists, published, I believe, is that correct? I would like to ask, if it has not been asked, that you submit your list of publications for the record, both of you, gentlemen.

Dr. Uhlig, are you a toxicologist, Ph.D., is your specialty in CS gas?

Dr. UHLIG. No, sir, Mr. Wise. It is not.

Mr. WISE. And I believe you opened your statement by saying that I am not an expert on CS gas, correct?

Dr. UHLIG. That is correct. I did that.

Mr. WISE. And, Mr. Parks, you have never professed to be an expert in CS gas, the chemical aspects?

Mr. PARKS. That is correct.

Mr. WISE. So the only two that are toxicologists, published, recognized as such are Dr. Upshall and Dr. Rice. I thank the panel for making that clear.

Mr. MCCOLLUM. You have yielded back your time?

Mr. WISE. And the only thing I want to say for the record in yielding back my time, the only two that are experts in the area of CS gas, which is the subject before us, the others are experts in other areas, but CS gas is the issue before us, and the only two that are experts that are published and recognized as such are Dr. Upshall and Dr. Rice.

Thank you.

Mr. MCCOLLUM. Thank you, very much.

Ms. JACKSON LEE. Mr. Chairman, in keeping with the procedures you used on the other side, can I get Mr. Wise's time, if he would yield it to me?

Mr. MCCOLLUM. If he wants to yield to you, certainly.

Mr. WISE. Yes, I will yield to Ms. Jackson Lee.

Ms. JACKSON LEE. Mr. Schumer, would you mind?

Mr. SCHUMER. Not at all.

Ms. JACKSON LEE. Dr. Rice, Dr. Upshall, I started out with these questions because we have all been talking about children. And I do not think there is any distinction on either side of the aisle of the compassion and the feeling that you have for the children that were lost, the African-Americans that were lost, the Hispanics that were lost, the Asians that were lost, the Anglos that were lost, the

women that were lost and the children that were lost and the men that were lost.

Again, I ask you the question about CS gas, not CN gas, but CS gas. If there were holes put in or doors opened and we do not have all the facts, would the CS gas, as you understand it and your study determined, immobilize mothers with children or children such that they could not find an exit to get out which all of us prayed that they would have been able to do?

Can you tell me that?

Dr. UPSHALL. The CS gas would not have immobilized them. And my instincts would tell me that mothers would pick up their children and take them with them.

Ms. JACKSON LEE. Dr. Rice, please.

Dr. RICE. I would concur with that view, and have nothing else to add.

Ms. JACKSON LEE. Do you want to add anything about suffocation?

Dr. RICE. I think the concentrations that were likely in that building, given the amount that was put in over the time frame it was put in, that starvation of air was not a problem. The concentration of CS was not high enough to exclude air from the building.

Ms. JACKSON LEE. Thank you.

Mr. MCCOLLUM. Thank you, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you.

Mr. MCCOLLUM. Mr. Zeliff, you are recognized for 5 minutes.

Mr. ZELIFF. I am going to give my friend from Maryland, Bob Ehrlich, 30 seconds.

Mr. EHRLICH. I just feel compelled to make a short statement with respect to Mr. Schumer's representations. As I said earlier, I do not think that anyone here is on anyone's side. I do not choose to believe or disbelieve anyone on this panel. I thought it quite clear from the record that I asked a very specific question with respect to the appropriateness of CS gas use at Waco under the particular circumstances as described by witnesses before this committee.

I appreciate the honest and forthright answer from every witness regardless of your side. Thank you

Mr. ZELIFF. Reclaiming my time.

You are a chemist, are you not, Dr. Uhlig?

Dr. UHLIG. Yes, sir, that is correct

Mr. ZELIFF. With fairly decent credentials?

Dr. UHLIG. Darned if I know, I guess that is your interpretation. I am published and I have got a patent.

Mr. ZELIFF. Right, so you know what you are talking about when it comes to chemistry.

Dr. UHLIG. Yes, when it comes to chemistry

Mr. ZELIFF. Thank you very much. In the line of chemistry you stated in your opening that children could have died from asphyxiation from CS gas, could you expand on this point, and does CS have a different effect on children than it does on adults? If you want to mention toxicity as well, and if you could be brief, I would appreciate it.

Dr. UHLIG. Well, I have already mentioned the different factors that come into play. I would agree with the gentleman from Harvard in his statements and the EPA that there are differences in children.

I see the differences in my own grandchildren and that is where I come from. The other thing is not so much of the CS as opposed to the methylene chloride and the agents that were used to inject it, methylene chloride and carbon dioxide, Congressman Zeliff. Those are the two agents that I do not think anyone considered when they injected the material into the room and Ms. Reno was advised.

Once the fire started then, of course, you have quantities that I think you will hear this testimony later on, quantities of hydrogen cyanide generated. My British cousins indicated that there was a particle size that prevented the CS from settling out. And if you take a look at that particle size, that is a dust particle and that could be an accelerant for a fire.

But when the CS does decompose it does give hydrogen cyanide, carbon monoxide and carbon dioxide. But I do not think in the autopsy that you can determine how much hydrogen cyanide in the lungs of somebody is due to CS and how much of it is due to fire conditions

Mr. ZELIFF. Thank you, very much.

And Dr. Stone, as an independent reviewer of this tragedy, and someone who worked for the Attorney General in this review, do you feel that she was misinformed on the information that was given to her on CS gas?

Dr. STONE. I do not think she was properly informed about the risk of CS gas to children, which concerned her, yes.

Mr. ZELIFF. And I would like to have the clerk pass out copies to the whole panel here of the crisis center log at Ruby Ridge. I will just read it quickly, August 22, 1992, this is entered at 4:50 p.m., the log also stated that weather was a major factor and the plan was scheduled to commence late that afternoon but might be pushed back because of weather conditions. Concern was raised about the deployment of gas into the residence because of a high degree of risks to small children and the possibility that a 1-year-old baby was inside. These were the marshals and the actual marshal, the official marshals' log.

And Larry Potts was involved at Ruby Ridge. He was also involved at Waco. He was involved with the decision there and involved with the decision at Waco.

And if I just give you one statement here, if you just take this information here, and again, I believe it is fairly credible, and I would think that they would use this after having gone through Ruby Ridge, why would they not use the same background for Waco? Just one question. If one child was known to be under 2 years old in the compound, since we knew that there were no gas masks anywhere, I mean, just take a picture of what we did, as a government, to all those children, to what was happening, what happened at Waco, was this a responsible act? Was it something that we should do or was this something that was an irresponsible act?

I would just like each of you, just reading this, based on what we know, what they knew then also, do you think it was responsible or irresponsible to move forward?

We will start with you, Dr. Stone.

Dr. STONE. Well, you know, I do not want to sort of—OK, let me just say very quickly, in my view, I do not think that it was responsible to plan to put CS gas for 48 hours into a building containing children. I cannot believe that my colleague, who is a physician from England, would suggest, if he was asked, that that was an acceptable plan. I cannot believe it. So I——

Mr. ZELIFF. So that is what I would like you to do. If each of you were asked, based on this information or whatever else you know, would you move forward and do you think that is a responsible plan or an irresponsible plan?

Dr. STONE. No, I would not say it is responsible.

Mr. ZELIFF. Thank you. Dr. Marcus.

Dr. MARCUS. I just want to make a quick observation.

The Himsworth Report, which is what is relied upon by our British cousins, is one of what I would consider precisely the same type of anecdotal information that they deplore. They went around and talked to people weeks and weeks after the fact. And I do not think it is responsible to say we do not know for sure it is going to hurt kids.

Well, if you do not know for sure, do not take the chance. That has always been my feeling as somebody to try to protect children and the American public, if you do not know, do not take the chance. So I do not think it was responsible.

Mr. ZELIFF. Dr. Rice.

Dr. RICE. I think given the circumstances, as I said before, if it is an operational decision the actual risk of doing harm is balanced by the benefit of going in, then I would not have a problem.

Mr. ZELIFF. So if you were that person that was making that decision, you would go ahead and do it?

Dr. RICE. If those were my children in there and they had gone through all that we understand that they had gone through during the siege, then I think if you could maintain the concentration sufficient to have an effect, then, yes, I would go ahead.

Mr. ZELIFF. You would go ahead with my own children?

Dr. RICE. Yes.

Mr. ZELIFF. That is amazing.

Dr. Upshall.

Dr. UPSHALL. I would agree with that. And furthermore I would say that the information that is in the Himsworth Report is not anecdotal. The committee investigated all the major hospitals in the area at the time and a mass of information was collected on the consequences of that specific event.

Mr. ZELIFF. Dr. Uhlig.

Dr. UHLIG. I do not feel it was responsible or I would not be here now if that were the case. Just to show that there is not any bipartisanism here, I happen to serve on the Democratic Committee in probably the only county in a Republican State that is Democratic. So I do not play the party politics here.

Mr. ZELIFF. I thank you for your honesty and we would agree on our side of the aisle as well. We are just trying to get at the truth.

Mr. Parks.

Mr. PARKS. Congressman, I am not qualified to answer that question and I cannot answer it.

Mr. ZELIFF. OK. Well, I will tell you what, I am not a chemist and I do not have a lot of papers published but when I go home to my town meetings, up in New Hampshire, I sure do not think I could justify our Government putting in that gas in those amounts to women and children that eventually ended up in a tragedy of over 80 people. I just think it blows my mind, and I hope we get some answers in the next couple of days.

Thank you all very much.

Dr. RICE. Can I just make a comment? That surely assumes that you accept that CS has killed all these people. What is the evidence for that?

Mr. ZELIFF. Well, I said I look forward to the evidence that we will see in the next couple of days, but I go according to——

Mr. MCCOLLUM. Hold on, order in the House. Those are obviously conclusions that different people can draw.

Mr. Hyde, you are recognized for 5 minutes.

Mr. HYDE. Thank you, Mr. Chairman.

I was watching the testimony in my office, and I got a little concerned about the downgrading of those people who are not published on CS. I understand there have been no scientific tests made of the effect of CS on infants. And if that is so, then it is pretty hard, I think, to draw scientific conclusions that they were not harmful.

But I did hear that the use of CS could cause an infant to vomit and if you had an infant lying on its back, his or her back, and was infused with this gas, causing vomit, if that child could not turn over, if the mother was not right there, that child could strangle in its own vomit.

Is that not so, Dr. Upshall?

Dr. UPSHALL. What you are saying is absolutely correct. What I am questioning is where the evidence is that the child will vomit? I have seen no evidence.

Mr. HYDE. No evidence that the child vomited?

Dr. UPSHALL. I have not been presented with any scientific evidence that the child would vomit.

Mr. HYDE. Well, after a fire it might be awfully hard to find that evidence.

Dr. UPSHALL. That is very true but it does not allow one to presume that the child has vomited.

Mr. HYDE. No, but the likelihood that this could happen would be a factor in considering whether to shoot that stuff in which is going to cause vomiting on infants who cannot protect themselves.

Dr. UPSHALL. What I am suggesting, sir, is that there is no evidence that they vomit. I am suggesting that this has been put forward as one of the signs.

What is known, in fact, in humans, in adult humans is that the incidence of vomiting is a very low incidence. It is about 1——

Mr. HYDE. But we do not know about infants, do we?

Dr. UPSHALL. Absolutely, and I concur absolutely, we do not know about the incidence——

Mr. HYDE. So where do you give the benefit of the doubt if you have a lot of infants in a place and you really do not know, you are shooting in the dark, are you not?

Dr. UPSHALL. As I said before, in this situation it is an operational decision and balance of risk and benefit. There is risk, there is undoubtedly risk.

Mr. HYDE. Risk to the lives of infants.

Dr. UPSHALL. Risk to all lives in all these situations in which——

Mr. HYDE. But, particularly infants who cannot protect themselves.

Dr. UPSHALL. What I have said is there is no evidence to show that children are any more sensitive than adults.

Mr. HYDE. But when they vomit an adult might know what to do.

Dr. UPSHALL. Absolutely.

Mr. HYDE. But an infant, lying on his or her back, is helpless.

Dr. UPSHALL. That is absolutely correct. I have children of my own so I know precisely what you are talking about.

Mr. HYDE. Sure. But that is a risk then that was obviously taken by somebody who said, let us go ahead anyway with it, right?

Dr. UPSHALL. It is a risk and one has to judge the risk and benefit in these situations bearing in mind all the other things that are happening to the children in that compound.

Mr. HYDE. And both of you, Dr. Rice and yourself, are scientists and you are experts in this field. But experts are reluctant, in the pure science of the matter, to draw conclusions without some tests, without some data. Is that not a scientific principle?

Dr. UPSHALL. The scientific principle is that you seek the evidence and make a judgment based on the evidence.

Mr. HYDE. But there is no evidence as to the effect of CS on infants, is there?

Dr. UPSHALL. There is no evidence to show that infants vomit, either. I am suggesting that those two pieces of information are of equivalent value.

Mr. HYDE. In other words, you do not buy the statement that this type of gas which is supposed to be so irritating as to drive people out of a building, you are not ready to accept the fact that this poses an extra hazard on helpless infants who may be lying on their back?

Dr. UPSHALL. What I am saying is there is a hazard, there is a risk. Whether you move is a matter of judgment at the time as to the relative benefits on the risks. This is an operational decision. It has nothing to do with toxicology, well, it has to do with toxicology.

Mr. HYDE. It is an operational decision, though that is a rather cold term to describe the possibility, indeed, I would say the probability of infants who cannot help themselves coping with a gas that is designed to irritate and will result in vomiting.

Dr. UPSHALL. I am sorry, sir, but you keep saying that it will result in vomiting, I cannot agree with that. There is no——

Mr. HYDE. Well, Dr. Marcus, I see you have been down-graded, but, indeed, you are a doctor. What evidence have you got that this would cause vomiting?

Dr. MARCUS. I have a paper here by Drs. Park and Giamano which my colleagues are very much aware. And it talks about all these problems that this child does not exist according to these people. This child never got hurt. This is one of the objective pieces of evidence we have, as opposed to nothing, and it talks about what happened to this poor young child. He was observed to have copious nasal oral secretions, sneezed and coughed frequently. And he had upper air-way obstruction. Precisely what you are talking about, vomit that would be aspirated giving upper air-way obstruction.

I think that is pretty clear.

Mr. HYDE. There had better be no asthmatics in there, right?

Dr. MARCUS. If there are asthmatics in there, they have really big problems because the secretions they put out, including the mucous secretions might plug a lot of things up quickly.

Mr. HYDE. All right, I thank you.

Dr. RICE. Just as a matter of clarification.

Mr. HYDE. Yes, doctor.

Dr. RICE. Nowhere in that paper does it say that a child vomited.

Mr. HYDE. Well——

Dr. RICE. An excess of nasal secretions is not vomiting.

Mr. HYDE. Well, Dr. Marcus says that it means vomiting and I do not know if any of you are experts on vomiting. I might be because I have vomited a few times in my life and I probably will again.

Dr. RICE. I am medically qualified, sir, and there is no way that you can say that an excess of nasal secretions is the same as vomiting.

Mr. HYDE. Now, Doctor, really, do you not think that this gas might well result in vomiting in an infant?

Dr. RICE. From what we know vomiting is certainly one of the effects of CS.

Mr. HYDE. OK.

Dr. RICE. From the records that we have it is not a particularly common one. It is not as common as the other features that we have already described to you, like the tearing in the eyes.

Mr. HYDE. But you do not know how it affects infants, do you, because you have no tests along those lines, is that not right?

Dr. RICE. No, we have not, but are we suggesting that we expose infants to find out more about this on their systems?

Mr. HYDE. Well, I do not know. It is probably better than just saying it was a risk benefit and it was worth taking the risk. And obviously——

Dr. RICE. To have a controlled experiment where we actually expose children to CS?

Mr. HYDE. Well, I know you would not want your children exposed to CS.

Dr. RICE. Not under those circumstances, no.

Mr. HYDE. Yes. I am sure they did not want their children exposed either.

Mr. MCCOLLUM. Ms. Slaughter has come in and I will recognize you, Ms. Slaughter, for 5 minutes.

Ms. SLAUGHTER. Thank you, Mr. Chairman.

I want to point out that the only infant that I am aware of on this list was one that came out 5 months old. In a conversation later with the real Mrs. Koresh, the married Mrs. Koresh, said that there were 20 children and did not mention infants.

I would like to yield the rest of my time to Mr. Wise.

Mr. WISE. Mr. Schumer, if you would yield a minute to Mr. Schumer.

Mr. SCHUMER. Thank you. I guess Mr. Wise yielded to me.

I would just like to make one point, and that is Chairman Hyde is correct, Henry, if I just might, Chairman Hyde and I have tremendous respect for him. It is correct that if it was using the gas versus not using the gas and the children would come out and be safe, I think everyone would agree that we would not use the gas. What you had to weigh then and what we all must still have to weigh right now is that not using the gas and letting the children stay in also had some risks.

We can all debate what the percentage of those risks were, but as I said earlier today or yesterday, if Janet Reno had said, do not use the gas, let the siege continue and on day 54, David Koresh decided to set fire to the compound because he believed Armageddon was here or whatever else, we would all be screaming at Janet Reno for being too cautious, too careful, that she should have gone in and perhaps if you would have said what was the plan of going in? They said tear gas, well, tear gas is a lot better than a conflagration.

So the question is not tear gas versus not tear gas. The question is the risks of tear gas versus the risks of allowing Koresh to remain alone, a very difficult question. I yield the remainder of my time.

Mr. HYDE. Mr. Schumer.

Mr. SCHUMER. I cannot yield, it is Mr. Wise's time.

Mr. HYDE. I just have one request to make.

Mr. WISE. One request, yes, sir.

Mr. HYDE. Thank you, so much. I owe you one.

Dr. Marcus, would you make available to the committee that monograph that you were referring to concerning the stopped up nasal passages?

Dr. MARCUS. Yes.

Mr. MCCOLLUM. I will add any time necessary, Mr. Wise, go ahead.

Mr. WISE. No, I would rather be in Mr. Hyde's debt.

I thank you. Let me get the—I happen to agree with what Mr. Schumer said. Are any of the panel here experts on the impact of armored vehicles crashing into and having to tear down a house because you were not able to drive the people out? Is anyone here—I am asking a rhetorical question—is anyone here an expert on the impact of 105-mm shells rained into a compound with women and children and people inside? I do not think so.

And so it is a question of, in relation to what? What were the options available?

Now, Dr. Upshall, since you, since Mr. Hyde was examining you, is there any evidence that any of the children were killed by CS gas?

Dr. UPSHALL. None that I have seen.

Mr. WISE. And incidentally, for the record, let me state that I was not referring necessarily to the pictures that Mr. Barr had, I was referring to the fact that the record shows that at least one child was stabbed.

So there is no evidence that any child was killed by CS gas. Going back to your former testimony, was it not your testimony that the gas that was injected into that compound was significantly below any lethal content?

Dr. UPSHALL. Very much so.

Mr. WISE. And was it not also your testimony that that would have been reduced further, in terms of its lethal nature, by the fact that winds were then blowing through the compound due to the holes that had been knocked into it?

Dr. UPSHALL. Any ventilation would reduce the concentrations.

Mr. WISE. We also have spoken a great deal about the children and that is what is uppermost on all of our minds, particularly those, all of us, because I believe all of us are parents. But at the same time we had a number of, probably 50 at least, armed men and women inside that compound. And that was also part of the objective was to be able to get into that compound, to get the children out safely, hopefully to get the parents and adults out safely and not to have anybody killed.

And we had already had four ATF agents shot in just that exercise. And so all of that given, you talked about risk/benefit. You then think that given what you know to be the case, both from your research and what you have heard today, did the risk of injecting that gas, was it commensurate with the benefit that was hoped to be obtained?

Dr. UPSHALL. From what I understand of the operations decisions, yes. I think the risk was appropriate.

Mr. WISE. I just say that to the other side which was very hot on risk/benefit analysis, right now in all of our legislation.

So what we had then was a situation where you had David Koresh, acknowledged child molester, acknowledged child abuser, stockpiled automatic weapons in violation of Federal law, had shot, he and his followers had killed four ATF agents, a number of children in degrading conditions and the decision was made to introduce a gas which the testimony of the only two that have published and are acknowledged as experts in the area of CS gas was that there was no evidence that any child was killed by CS gas. The amount of gas introduced into that compound was below any kind of lethal content. I think you said about 1/10th of what would be considered lethal, Dr. Upshall and that that dosage was also lessened by not only time, but also by the winds, whether it was 25 knots or 35 miles per hour, blowing through that compound.

That was what the FBI faced that day. I would yield back my time to Ms. Slaughter and thank the panel.

Ms. SLAUGHTER. I think my time has expired.

Mr. MCCOLLUM. Well, all right, thank you, very much.

I will take 5 minutes for myself and we will conclude this panel tonight so that we will not have to come back here. I am sure they will be happy about that and so will everyone else.

I want to ask a couple of quick questions. First of all, I want to clarify something, Dr. Stone, if you could take the microphone over

there. In any way did your contact with Fran Haga have any influence on your testimony here tonight?

Dr. STONE. No.

Mr. MCCOLLUM. I did not think it did. I also want to ask Dr. Upshall and Dr. Rice, if you had any relationship with the Department of Justice in giving advice about the use of this gas before the assault on the Waco compound in April 19, 1993?

Dr. UPSHALL. None at all.

Mr. MCCOLLUM. All right. Also, am I correct that the studies you have done on the delivery method of the CS gas, in your research, were primarily through the incendiary device as opposed to the type of delivery method they used in this particular case?

Dr. UPSHALL. The studies reported in the Himsworth Report are largely in relation to the incendiary devices, yes. But I should point out that the general consensus is that incendiary devices are actually somewhat more toxic than the method employed.

Mr. MCCOLLUM. I was not asking that question at all. I am just suggesting from what I have read in the Department of Justice's own report and the FBI that the method of delivery was not the standard one, and not the one used primarily by the British or in your studies, is that correct, sir?

Dr. UPSHALL. That is correct, sir.

Mr. MCCOLLUM. I would like to make a couple of quick observations of my own. Everybody else is making all these observations tonight. I think the salient points here are that the question of whether the Attorney General got the full advice she should have gotten and perhaps whether she should have been questioning it more than she did at the time she made the judgment call.

It seems to me pretty apparent that she got some narrow advice we have not heard except for what Dr. Stone has been able to tell us because he is the only one on the panel here who had any experience with this and was involved in overviewing the investigation.

Of the advice itself, we are going to get that testimony and all about what she did get, both from her and from others, coming up in future panels.

But based upon what I have heard tonight, while there is certainly a conflicting opinion, I think that everybody here at this panel is an expert. Not necessarily having done the studies that Dr. Upshall and Dr. Rice did under peculiar conditions on CS gas, but then nobody else, I guess, has really.

But we have an imminent toxicologist from the Environmental Protection Agency, who has spent a lot of time studying this, and Dr. Marcus, who gave us what sounded to me a very, very good scientific opinion. Obviously somewhat in conflict with the two British witnesses.

We had Dr. Uhlig, who is an excellent chemist, as far as I know. No one tested his credentials on that. He gave us excellent testimony in which Mr. Parks gave us the expert advice from a military perspective with regard to the conventions.

And Dr. Stone, who is a Harvard psychiatrist and a law professor, a strange combination, and was a person who was designated by the Attorney General to review all of these matters has given his opinions to us tonight.

I might add that, with the exception of our two British guests, who were brought over here by the Department of Justice and, of course, Mr. Parks who does not have a perspective on the technical part of this, the others concluded that they would not have used this gas under this circumstance with children present for the potential possibility of vomiting, for the potential possibility of affixation.

And now we know that there were younger children who did die of asphyxiation, whether it was from the fire or whether it was from the CS gas, I do not think we will ever know, or whether they ever vomited, we will not ever know. But the problem is not for us to decide that; the problem is for us to decide whether or not the judgments that were being made at the time were being made with the best evidence available, whether the people giving the advice to the Attorney General exercised prudent judgment in deciding what was to be given to her or not, whether she was given enough, and whether or not when she got it, she should have questioned and asked for more under the circumstances. Those are the questions and we do not have all of those answers tonight, but your input has been very meaningful, and I want to thank you.

In concluding I have got to ask one question of you, Dr. Stone. You left a very pregnant answer on the table. You were asked, and then cut off, about a question related to your opinion, as I presume as a psychiatrist and as a reviewer of the facts by the Attorney General's designation, of the whole question of the FBI's handling of David Koresh in terms of his antisocial behavior.

Would you, at least as we walk out of here tonight, clarify that so we do not have telephone calls ringing off our phones tomorrow that we did not give you a chance to respond to that.

Dr. STONE. Yes. The question was whether he was an antisocial personality disorder and, therefore, he could be treated like an ordinary criminal, as I believe the FBI testified today and as they said at the briefing.

Now, there is not an doubt that I, and the other psychiatrist who reviewed this information did not think that he was an anti-social personality disorder. He may have had some other disorder but he certainly was not that.

And it was a mistake to think that he would react like a common criminal would react to a show of force.

Mr. MCCOLLUM. Thank you very much.

I appreciate the testimony that everybody gave and you have been well to endure us tonight. These hearings will then, therefore, be recessed until tomorrow morning.

Ms. JACKSON LEE. Mr. Chairman.

Mr. MCCOLLUM. You have a point of order?

Ms. JACKSON LEE. I have a procedural inquiry.

Mr. MCCOLLUM. OK, procedural inquiry, I am about to tell you when tomorrow, but go ahead.

Ms. JACKSON LEE. All right. I simply want to ask, in terms of the final focus of these hearings, meaning whether we will have findings and then maybe corrective action, I just want to be assured, I am a new member, that out of the testimony that we have gotten, which has obviously been conflicting, will we not have find-

ings which may, in fact, suggest this CS gas did not prohibit people from getting out? That is a finding, but we will also have——

Mr. MCCOLLUM. Ms. Jackson Lee, let me talk about procedure, if I can cut you off, we have got to go and vote. I do not mean to reroute, but the bottom line is that there will be a report issued by the committee, and you will have an opportunity to correct it or suggest corrections to it——

Ms. JACKSON LEE. That is what I would like to know, findings and corrections.

Mr. MCCOLLUM. And you will also have an opportunity to issue minority views if you disagree with it.

Ms. JACKSON LEE. I appreciate that.

Mr. MCCOLLUM. So those opportunities ultimately at the end of the day will be there for you.

Ms. JACKSON LEE. Thank you.

Mr. MCCOLLUM. The joint subcommittees on Waco will commence tomorrow morning at 9 a.m., not in this room, but in 2141, next door, and until then, 9 a.m. tomorrow morning, these subcommittees are in recess.

[Whereupon, at 9:59 p.m., the subcommittees adjourned.]

ACTIVITIES OF FEDERAL LAW ENFORCEMENT AGENCIES TOWARD THE BRANCH DAVIDIANS

(Part 2)

THURSDAY, JULY 27, 1995

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIONAL SECURITY, INTERNATIONAL AFFAIRS, AND CRIMINAL JUSTICE, COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT, JOINTLY WITH THE SUBCOMMITTEE ON CRIME, COMMITTEE ON THE JUDICIARY,

Washington, DC.

The subcommittees met, pursuant to notice, at 9:12 a.m., in room 2141, Rayburn House Office Building, Hon. William H. Zeliff, Jr. (chairman of the Subcommittee on National Security, International Affairs, and Criminal Justice) presiding and Hon. Bill McCollum (chairman of the Subcommittee on Crime).

Present from the Subcommittee on National Security, International Affairs, and Criminal Justice: Representatives William H. Zeliff, Jr., Robert L. Ehrlich, Jr., Steven Schiff, John L. Mica, Peter Blute, Mark E. Souder, John B. Shadegg, Karen L. Thurman, Robert E. Wise, Jr., Louise McInosh Slaughter, Gene Taylor, and Bill K. Brewster.

Present from the Subcommittee on Crime: Representatives Bill McCollum, Steven Schiff, Stephen E. Buyer, Howard Coble, Fred Heineman, Ed Bryant of Tennessee, Steve Chabot, Bob Barr, Charles E. Schumer, Robert C. Scott, Zoe Lofgren, Sheila Jackson Lee, and Melvin L. Watt.

Also present from the Committee on Government Reform and Oversight: Representatives William F. Clinger, Jr., Cardiss Collins of Illinois, and Gene Green.

Also present from the Committee on the Judiciary: Representatives Henry J. Hyde and John Conyers, Jr.

Staff present from the Subcommittee on National Security, International Affairs, and Criminal Justice: Robert Charles, staff director and chief counsel; L. Stephan Vincze, defense counsel; T. March Bell, counsel for justice affairs; Marshall Cobleigh, senior policy advisor; Michele Lang, special counsel; Sean Littlefield, special assistant and clerk; Committee on Government Reform and Oversight: Kevin Sabo, general counsel; Judith McCoy, chief clerk; Jeffrey Wilmot, professional staff member; Bud Myers, minority staff director; David Schooler, minority chief counsel; Ronald Stroman, minority deputy staff director; Donald Goldberg, minority assistant to counsel; Cherri Branson, minority professional staff member; Ellen

Rayner, minority chief clerk; Cecelia Morton, minority office manager; and Eddie Arnold, public affairs officer.

Staff present from the Subcommittee on Crime: Paul J. McNulty, chief counsel; Glenn R. Schmitt, counsel; Daniel J. Bryant, assistant counsel; and Audray L. Clement, clerk; Committee on the Judiciary: Alan F. Coffey, Jr., general counsel/staff director; Dan Freeman, parliamentarian; Julian Epstein, minority staff director; Perry Apelbaum, minority general counsel; Melanie Sloan, minority counsel; and Tom Diaz, minority counsel.

Mr. ZELIFF. The joint oversight committees on Waco will now come to order.

Today gets into our seventh day of oversight hearings on executive branch conduct at Waco, and this probably to everyone's great disappointment, will be a fairly short day. In other words, we hope to be done by 1 o'clock. If we are not done with the panel at 1, there is a markup that will go on we think between 1 and 3. We will then recess, subject to the call of the Chair, for approximately 2 hours, reconvene hopefully around 3, and then finish up. In any way's analysis, I think that is a short day. We will be having short openings by the Chairs and the ranking members, and we will only have one panel today.

We have to question a central and much discussed group of a very important people, the FBI decisionmakers. We will hear from Mr. Larry Potts, the former Assistant Director of the FBI, Criminal Investigations Division. He was a key person at the events at Waco. We will hear from two individuals we heard from yesterday, Mr. Jeff Jamar, the Special Agent in Charge and onscene commander at Waco, and Mr. Byron Sage, the first FBI hostage negotiator on the scene at Waco. We heard from these two gentlemen yesterday, but today we will hear from them on a different topic, the FBI decision to insert CS gas in the Davidian compound.

Finally, we will hear from two other central decisionmakers, below the Attorney General and the President at the Department of Justice. They are: Mr. Anthony Betz, the FBI's Unit Chief of Domestic Terrorism, and one who researched CS gas for the Attorney General and Mr. Dick Rogers, an Assistant Special Agent in Charge and the leader of the FBI's Hostage Rescue Team. I want to say that this is a high ranking group. These individuals are central to the Justice Department and they are essential to the events at Waco. They are here on their own volition, and voluntarily, and they have come to help us try and sort out the many unanswered questions and unsettled facts.

As the joint subcommittees performing our constitutional duty of oversight, we are glad that they have come before us and we sincerely hope to get to the bottom of what happened and why the decision was made to use CS gas on over 80 Americans.

In this process, we think we have come a long way. We have learned new and important facts, again yesterday, and have put in a string of very late nights. We and the EPA, and you had to be here to understand the significance of that comment, but it was—it has been quite a session.

Today, we will explore in public for all of America to see the reasoning that went into the disastrous decision to insert CS gas into

the Davidian compound, and to do so with tanks and hundreds of canisters, or ferret rounds.

We will question again the timing and the substance of key pregassing conversations between FBI personnel at Waco and those in Washington. We will question who spoke to the Attorney General and who spoke for those close to her. We will ask who decided to use tanks, who gave the order to knock down walls, who sent in dangerous CS gas that ultimately killed infants and young children. We will begin to find out who coordinated those facts, who hastened them, and why those facts were chosen. Were there even vaguely viable alternatives to what was done? Were they rejected? At least we will ask those questions.

Thinking about it last night, it occurred to me that the American people have always appreciated persistence, and persistence in the name of truth. Well, there is nothing more important. If no one ever asked these questions, a lot of significant national problems would never have been dug into and brought to light. In almost every case, the result of a sincere oversight effort has been constructive.

Of course, difficult questions take extra courage, especially when you ask them of an institution as large and respected as the Department of Justice. But people of good faith, conscience, conviction—patriotic, and interested Americans—want their questions answered and they need this additional information.

As we stay the course, I think you will find that today's fresh panel produces some new findings. As we get closer and closer to the whole picture of what happened and why, today will be a day where we fit in some new pieces into the puzzle. We owe this truth-seeking function to the American people; we serve them and we do that every day. With them urging us on, we will get the whole picture assembled or as close as our congressional oversight role will allow.

And we thank you all. We have a great deal of respect for the institution you serve. Thank you for being here this morning.

The Chair now recognizes and introduces the cochairman of the joint subcommittees and the chairman of the Judiciary Committee's Crime Subcommittee, my good friend, Bill McCollum from Florida.

[The prepared statement of Mr. Zeliff follows:]

PREPARED STATEMENT OF HON. WILLIAM H. ZELIFF, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW HAMPSHIRE, AND CHAIRMAN, SUBCOMMITTEE ON NATIONAL SECURITY, INTERNATIONAL AFFAIRS, AND CRIMINAL JUSTICE

WELL, WE'RE INTO OUR SEVENTH DAY OF OVERSIGHT HEARINGS ON EXECUTIVE BRANCH CONDUCT AT WACO, AND THIS -- PROBABLY TO EVERYONE'S GREAT DISAPPOINTMENT -- WILL BE A FAIRLY SHORT ONE.

WE WILL HAVE SHORT OPENINGS BY THE CHAIRS AND RANKING MEMBERS OF THE TWO SUBCOMMITTEES, AND WE WILL HAVE ONLY THIS ONE SHORT PANEL TODAY.

ON THE OTHER HAND, WE ARE ABOUT TO QUESTION A CENTRAL -- AND MUCH DISCUSSED -- GROUP OF FBI DECISION-MAKERS. WE WILL HEAR FROM MR. LARRY POTTS, THE FORMER ASSISTANT DIRECTOR OF THE FBI, CRIMINAL INVESTIGATIONS DIVISION. HE WAS A KEY PERSON IN THE EVENTS AT WACO.

WE WILL HEAR FROM TWO INDIVIDUALS WE HEARD FROM YESTERDAY MR. JEFF JAMAR, THE SPECIAL AGENT IN CHARGE AND THE ON-SCENE COMMANDER AT WACO -- AND MR BYRON SAGE, THE FIRST FBI HOSTAGE NEGOTIATOR ON THE SCENE AT WACO.

WE HEARD FROM THESE TWO GENTLEMEN YESTERDAY, BUT TODAY WE HEAR FROM THEM ON A DIFFERENT TOPIC -- THE FBI DECISION TO INSERT C-S GAS INTO THE DAVIDIAN COMPOUND.

FINALLY, WE WILL HEAR FROM TWO OTHER CENTRAL DECISION-MAKERS, BELOW THE ATTORNEY GENERAL AND THE PRESIDENT. AT THE DEPARTMENT OF JUSTICE, THEY ARE MR. ANTHONY BETZ, THE FBI'S UNIT CHIEF OF DOMESTIC TERRORISM AND SOMEONE WHO RESEARCHED C-S GAS FOR THE ATTORNEY GENERAL --

AND MR. DICK ROGERS, AN ASSISTANT SPECIAL AGENT IN CHARGE AND THE LEADER OF THE FBI'S HOSTAGE RESCUE TEAM.

I WANT TO SAY THAT THIS IS A HIGH-RANKING GROUP. THESE INDIVIDUALS ARE CENTRAL TO THE JUSTICE DEPARTMENT, AND THEY WERE CENTRAL TO EVENTS AT WACO. THEY ARE HERE OF THEIR OWN VOLITION, AND THEY HAVE COME TO HELP US SORT OUT THE UNSETTLED FACTS ...

AS A JOINT SUBCOMMITTEE PERFORMING OUR CONSTITUTIONAL DUTY OF OVERSIGHT, WE ARE GLAD THEY HAVE COME BEFORE US, AND WE SINCERELY HOPE TO BE ILLUMINATED.

IN THIS PROCESS, I THINK WE HAVE COME A LONG WAY, LEARNED NEW AND IMPORTANT FACTS AGAIN YESTERDAY, AND HAVE PUT IN A STRING OF VERY LATE NIGHTS -- WE AND EPA ...

TODAY, WE WILL EXPLORE IN PUBLIC -- FOR ALL AMERICA TO SEE -- THE REASONING THAT WENT WITH THE DISASTROUS DECISION TO INSERT C-S GAS INTO THE DAVIDIAN COMPOUND, AND TO DO SO WITH TANKS AND HUNDREDS OF FLYING CANISTERS, OR FERRET ROUNDS.

WE WILL QUESTION AGAIN THE TIMING AND SUBSTANCE OF KEY PRE-GASSING CONVERSATIONS BETWEEN FBI PERSONNEL AT WACO AND THOSE IN WASHINGTON. WE WILL QUESTION WHO SPOKE TO THE ATTORNEY GENERAL AND WHO SPOKE WITH OTHERS CLOSE TO HER.

WE WILL ASK WHO DECIDED TO USE TANKS, WHO GAVE THE ORDER TO KNOCK DOWN WALLS, WHO SENT DANGEROUS C-S GAS IN UPON TINY INFANTS AND YOUNG CHILDREN ...

WE WILL BEGIN TO FIND OUT WHO COORDINATED THOSE ACTS, WHO HASTENED THEM AND WHY THOSE ACTS WERE CHOSEN. WERE THERE VAGUELY VIABLE ALTERNATIVES TO WHAT WAS DONE? WERE THEY REJECTED? AT LEAST WE WILL ASK THESE QUESTIONS.

THINKING ABOUT IT LAST NIGHT, IT OCCURRED TO ME THAT THE AMERICAN PEOPLE HAVE ALWAYS APPRECIATED PERSISTENCE. AND PERSISTENCE IN THE NAME OF TRUTH -- WELL, THERE IS NOTHING HIGHER. IF NO ONE EVER ASKED QUESTIONS, A LOT OF SIGNIFICANT NATIONAL PROBLEMS WOULD NEVER HAVE BEEN EXPLORED AND BROUGHT TO LIGHT ... AND IN ALMOST EVERY CASE, THE RESULT OF SINCERE OVERSIGHT HAS BEEN CONSTRUCTIVE.

OF COURSE, DIFFICULT QUESTIONS TAKE EXTRA COURAGE, ESPECIALLY WHEN YOU MUST ASK THEM OF AN INSTITUTION AS LARGE AND RESPECTED AT THE DEPARTMENT OF JUSTICE. BUT PEOPLE OF GOOD FAITH, CONSCIENCE, CONVICTION -- PATRIOTIC AND INTERESTED AMERICANS -- WANT THEIR QUESTIONS ASKED -- AND THEY WANT THEM ANSWERED!

THE AMERICAN PEOPLE RESPECT THE COURAGE OF AN OPEN, INQUIRING AND INDEPENDENT MIND. THEY EXPECT IT WHEN THE ISSUES ARE AS SERIOUS AS THOSE WE CONFRONT TODAY. AND THAT IS, OF COURSE, DOUBLY TRUE WHEN YOUR STATED JOB IS CONGRESSIONAL OVERSIGHT.

AS WE STAY THE COURSE, I THINK YOU WILL FIND THAT TODAY'S FRESH PANEL PRODUCES SOME FRESH FINDINGS. AS WE GET CLOSER AND CLOSER TO THE WHOLE PICTURE OF WHAT HAPPENED AND WHY AT WACO, TODAY WILL BE A DAY WHEN WE PUT NEW PIECES INTO THE PUZZLE. WE OWE THIS TRUTH-SEEKING FUNCTION TO THE AMERICAN PEOPLE; WE SERVE THEM AND WE DO SO EVERY DAY. WITH THEM URGING US ON, WE WILL GET THE WHOLE PICTURE ASSEMBLED OR AS CLOSE AS OUR CONGRESSIONAL OVERSIGHT ROLE WILL ALLOW. THANK YOU.

Mr. McCOLLUM. Thank you very much, Mr. Chairman.

I want to welcome our panel this morning as we begin our 7th day of these hearings, and about a very important part of these hearings the formulation of the assault plan and the rationale behind why it was necessary. But before we do that, I want to at least put the last couple of days of hearings in somewhat of a perspective, at least, as I see it.

We have walked through very carefully yesterday a long and lengthy hearing on the FBI's beginning role in the negotiations and the siege and what led up to the assault that occurred on April 19. I think from that lengthy discussion yesterday, it has become apparent to anybody who is watching or listening to this, that most, if not all of what the FBI was doing on the scene, was perfectly up to the keeping of the standards that we would expect from our FBI.

We have been very proud of what we have heard in regard to most of us, and I think all of us up here on this panel, both sides of the aisle, want you, the FBI, to know that. I think what we are left with after yesterday, both on that panel and other discussions of CS gas by those who testified at the second panel last night as to what its effects might be, leave us with a couple of lingering questions that are broad in nature. Not necessarily the only questions, because some, of course, about how this assault developed and what happened may well lead to other questions.

But the two questions that stand out more than anything else have to do with the advice and information that was provided to the Attorney General, and perhaps questions that might go to the judgment of those who made the ultimate decisions—obviously the Attorney General and anyone else who was participating in the decision.

The questions center on the issue of whether or not in the negotiations process the Attorney General fully understood the status of the final phase of the negotiations. That is, did she have a sense that was accurate with respect to what Mr. DeGuerin, the attorney representing David Koresh, thought was the opportunity to bring Koresh and his crew out after the 14th of April, before the insertion of the gas on the 19th? Was there, indeed, information sufficient in her hands to make the judgment call she made, the negotiations were truly at an impasse and that to go further would be futile? There are serious questions raised as to whether or not that was the case.

I don't doubt for a minute that the FBI figures involved, that we have testifying before us, believe there was an impasse, believe that David Koresh would not under any circumstance come out, that indeed he wanted to be a martyr.

There are, however, others who presented rather compelling testimony that they did not believe that the FBI at that moment, having been there for many, many days, and having seen David Koresh reject and not live up to his commitments to come out on other occasions, was really listening when they believed that Koresh had found a way through his own interpretations of the Book of Revelation and the seven seals and his own religious views to not be a martyr but rather instead to be somebody who came out or who had an opportunity to be the messenger of God rather than to be the martyr.

Whether or not these interpretations are accurate is beside the point at this juncture. The question is whether or not the full flavor of the status of this opportunity and this state of mind and the belief of those who were involved in that was presented to the Attorney General for her decisionmaking.

The second question that has arisen has to do with the CS gas question, and that is whether or not the Attorney General really had sufficient data and information to make the decision on the gas. Did she simply have one outlook on it? Did she fully understand the ramifications of what this would mean to children potentially? Not necessarily that it was so.

We had testimony yesterday that testing simply hadn't been done on children, that we don't have a lot of information or data, but that there certainly is scientific evidence to indicate that if a child takes in this gas, it can affect a child quite differently, especially small children. And the potential for vomiting, the potential for perhaps even dying from asphyxiation as a result of either vomiting or the gas itself was there. The degree to which that was taken into consideration or understood by the Attorney General in her decisionmaking and those who were around her is not at all clear, and I certainly hope that that is clarified as we move through the next couple of days.

This was a crucial decision. Obviously, the lives of a lot of people were at stake. And we would like very much on this panel to know the answer to those questions and to that judgment call about what the Attorney General really knew and what she didn't. Obviously, she will be here with us on Monday to explain what she did and didn't know herself, but it is very important that we walk through the process to gather as much background on that, for her as well as for us at this point in time.

Today, as Chairman Zeliff has indicated, we are looking forward to hearing from those who planned the gas attack in the assault, and better understand why it was done and what was anticipated, not just from the standpoint of the gas, but from the standpoint of the tactics that were involved in this.

Thank you very much, Mr. Zeliff.

Mr. ZELIFF. Thank you, Mr. McCollum.

The Chair now recognizes the ranking minority member of the Crime Subcommittee, my friend, Chuck Schumer from New York.

Mr. SCHUMER. Thank you, Mr. Chairman.

And just two procedural points before we begin. One is that last night we were told there would only be one opening statement, so I being the shy person that I am prepared mine and I will speak for both Mrs. Thurman and myself.

Mr. ZELIFF. Shy?

Mr. SCHUMER. It was a joke, a wry attempt at humor. Or a poor attempt at humor, I guess. But in any case, so I will be giving the opening statement for both of us.

Second, we did have a snafu with the witnesses. We awoke this morning to find that one of the witnesses we had requested, who was coming from Aberdeen labs, the Army's expert on CS gas, was last night unilaterally told by the majority—by a majority staffer that he was not on this morning's panel. He will be on tomorrow morning's panel, but we had wanted him on both panels.

We talked it over with the majority and came to a decision that rather than hold up the hearings, we would contact that witness immediately. He is at the Aberdeen Testing Ground, which is about a hundred miles from here, and he will join us part of the way through. This was—we believe this was simply a mistake by the majority and no nefarious conspiratorial attempt to deprive us of our God-given rights.

Mr. ZELIFF. Did you notice since the beginning and the end, the constructive cooperation on both sides are helping bring this thing together?

Mr. SCHUMER. I was going to say, that was the nice part of my opening statement. Now let me get to the points that I would like to make.

I guess there are a couple of points that are beginning to emerge as these hearings unfold, and I would like to stress a couple of them. One is, I am very concerned with something that many of the critiques on the right about modern America society, that I have had some sympathy with, seems to be happening here, too. There is something called moral relativism, which says there is no right and wrong about anything; that there are just a couple of theories out there and let's weigh them all. Paul Johnson, who is a conservative writer and professor, says this began with Albert Einstein and the theory of relativity. But in any case, I see this exhibited at this, in these hearings, in a way that I find disconcerting. Last night was a classic example.

Now, by hypothesis, you know, we could have a panel on is the world round or is the world flat, and we could probably find a couple of people who say the world is flat and then we would have some expert geographers who say the world is round, and the way things work in modern America the next day everyone on television would just see some people saying the world is flat and some people saying the world is round and the next day all the media would say, well, Joe Smith said it was flat but John Doe rebutted and said it was round and it would be left there, because nobody draws any conclusions.

I found that to be the case a bit in last night's panel. We had two of the world's experts on CS gas. They testified here gas, CS teargas, is what I am attempting to call it, because CS gas has sort of a nefarious ring to it, and this is the mildest form of teargas table available and it is called CS gas, or CS teargas.

Anyway, we had two of the world's experts, who spent their lives studying this issue. They come from Britain. And they said unequivocally, that the gas was not harmful the way it was used for children. And in fact, if you look at the autopsy reports, those horrible reports of everyone who died, there is not a trace found of this gas on any of them. They died in many ways, all the people at Waco. Many of the adults were shot by bullets, many died by asphyxiation, which could have occurred by fire or other kinds of things. In any case, these experts testified to that extent.

Then we had two other people. One was a professor of chemistry at a 2-year college in eastern Utah, who has done no papers, has no expertise, on this kind of gas. The other was an employee in the drinking water section of EPA, who also had no expertise, and they

of course painted more dramatic and dire pictures about what the gas is like.

Well, I don't put the four witnesses—and then there was a fifth witness, who was a very credible witness, Dr. Stone, he is not an expert on CS gas, and he said some troubling things, which I think we are all going to have to weigh.

But the four witnesses who were experts on the gas were not comparable at all. And it seemed to me that that has happened time and time again.

We have had two lawyers who were never on the site, who are lawyers who were representing David Koresh, who said the bullets were fired first by the ATF, by them examining a door that is now missing, although the other door has evidence to the contrary and no one has given any evidence why one door would be different than the other door. And yet, it gets reported there is a dispute about who fired first.

We had all the agents who were there, there are three reporters, hardly employees of the Government, usually looking for skepticism about the Government, all on the scene who said that it was clear that the people in the compound fired first. We have the fact which hasn't been brought out that the second time there was an attempt to go to the compound by the FBI, it is clear, everyone agrees the FBI didn't fire a single shot, and yet they were met with a fusillade of gunfire that came from within the compound.

There are things in dispute here. There are mistakes that were made. I think that the panel that was the most devastating for the Government was the one with Sarabyn and Chojnacki and all of those people, and it came clear, and this panel has done—this committee has done a service by showing that the elements of surprise was lost and the raid went forward anyway with the ATF.

Now, we have known that before, but as I have said time and time again, to make it public in a televised hearing, fine. This hearing will make sure that doesn't happen again. I dare say that in any Federal agency with a large raid like this when surprise is lost, they won't do it. But then to get into extraneous—I mean, to sort of equate the two lawyers with all the others on the scene and say this is in dispute, or the experts on CS gas with two people I don't know where they came from, but they have as little expertise or almost as little expertise on the issue of CS gas, teargas, as I do, and say this is in dispute, we have to examine this, et cetera, to me something is wrong.

And that is why we in the minority have had trouble with how the panels were set up. That is why we in the minority have some dubiousness about the mission here. Not simply to bring out the truth, but for some to air theories that have been widely discredited, that are held by a few people who believe in conspiracies against the Government. And it fans those flames. And that is not good.

So I would ask everybody, my colleagues on both sides of the aisle, the people listening to this out in America, the media in particular, this is serious stuff, and the idea of just saying that theories that are flimsy have the same weight as theories that are backed up by witness after witness after witness, is a real problem.

I would make two other points. That is my most fundamental point. A second point I would make is related to that, and this one may get some people on—some of my colleagues upset, but I am going to say it.

We hear everyone professing we are on the side of law enforcement, we want to help law enforcement. And as I said, these hearings can, because anyone who is on the side of law enforcement doesn't give them a carte blanche. Just as I believe the SEC has been the best thing that happened to Wall Street by keeping them honest, having oversight of law enforcement agencies by outside groups, including panels like these, does the same. But when you say you are for law enforcement in your opening, and then you reach for the most implausible of theories and sort of try to blame law enforcement, I don't think you are really being for law enforcement. OK.

If you really back up law enforcement, you don't say that two defense lawyers who were not on the scene are more credible than 20 law enforcement officers and several reporters who were on the scene. You don't say that a professor from eastern Utah in a 2-year school who has no expertise on this and a rather controversial employee in the water division of the EPA is the same as the two world experts.

What you are doing is giving the benefit of the doubt not to law enforcement, but against law enforcement, when you do it. If you want to do that, fine, lots of people on my side of the aisle have done that for many years. But it is not fair to say you are for law enforcement and then take every whacky theory and use it as a club with which to beat law enforcement over the head.

So, Mr. Chairman, those are my points. I appreciate the time to give them and hope we will have an interesting day.

Mr. ZELIFF. Mr. Schumer, I am sure we will. And I would like the record to show that you had about an equal amount of time on both sides here in the opening statements.

Mr. SCHUMER. Thank you.

Mr. ZELIFF. I would now like to introduce the panel. To my left, your right, Mr. Larry Potts, former Assistant Director of the FBI Criminal Investigative Division. Next to him is Mr. Anthony Betz, Chief, the Unit Chief of Domestic Terrorism at the Federal Bureau of Investigation and researched CS gas for the FBI. I am sorry, let me go back.

Next to him was Mr. Jeffrey Jamar, the Special Agent in Charge of San Antonio, TX, and onscene FBI commander at Waco; Mr. Dick Rogers, in the middle, Assistant Special Agent in Charge and the leader of the FBI Hostage Rescue Team at Waco, TX; and Mr. Byron Sage was the Supervisory Senior Resident Agent, Austin, resident agency, and the first FBI hostage negotiator on the scene at Waco.

Welcome back again today. And, let's see, and—I guess I already introduced Mr. Betz, Chief, the Unit Chief of Domestic Terrorism at the Federal Bureau of Investigation and researched CS gas for the FBI.

Dr. Harry Salem, Ph.D., will be joining the panel when he can get here, is the Chief of Life Sciences Department Research and

Technology Directorate at the U.S. Army, Edgewood, Research Development and Engineering Center for the Department of Defense.

Gentlemen, if you would, please stand and raise your right hand.

[Witnesses sworn.]

Mr. ZELIFF. Thank you. Please be seated. Let the record show the answers were in the affirmative.

The Chair now recognizes Mr. Schiff from New Mexico for 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. Chairman, before asking questions of this panel, I would like to talk about yesterday's panel with respect to CS gas. I have to say first that I think the credentials of some of the witnesses were understated. For example, Dr. Marcus of the Environmental Protection Agency testified that his Ph.D. was based on or based in part on a study of inhalation toxicology.

Second of all, it is significant that when I asked the British experts, upon whom Mr. Schumer said we should place the most reliance, to their knowledge has the British Government ever come up with a plan to insert gas into a building for 48 hours, or has the British Government ever come up with a plan to insert CS gas into a building where they knew were children and infants, they both said no. So I think it is extremely interesting that the experts that we are told are the superior experts in this subject, can't cite an example of where their Government did exactly what our Government did in this particular situation.

Mr. Jamar, sir, I have a couple of followup questions from yesterday, if I may. I want you to know again that every member of both of these subcommittees, both parties, wishes that there had been no loss of life at all in that situation. And we hope that these hearings will at least produce enough knowledge that it won't occur again.

But I want to ask you a question based upon Dr. Stone's testimony, because he mentioned your name specifically. Said to ask you. Dr. Stone, who was on the Attorney General's review panel, said that if the—if the Branch Davidians, being armed it is said with automatic weapons, including a 50-caliber machinegun, had wanted to kill ATF agents for the sake of killing ATF agents, that they could have done so with automatic weapons, they could have literally wiped out the entire group as they were disembarking from the trucks and so forth, and said to ask you about that.

Would you respond, please?

STATEMENT OF JEFFREY JAMAR, FORMER SPECIAL AGENT IN CHARGE, FEDERAL BUREAU OF INVESTIGATION, SAN ANTONIO, TX

Mr. JAMAR. Well, I had heard about that. I'm wondering what—our discussion, he called me 2 years ago almost, I guess more than 2 years ago, to discuss his part of the study group he was on. I think the discussion was really there's no question that the Branch Davidians intended to kill AFT agents when they're firing automatic weapons at them when they approached and throwing hand grenades at them. That's not the question. I think the context of the discussion was I think by the grace of God more ATF agents weren't killed. I think——

Mr. SCHIFF. Is it true——

Mr. JAMAR. Maybe it—please let me finish my thought here.

Mr. SCHIFF. I am sorry.

Mr. JAMAR. One thing, probably part of our discussion, was that, thank goodness there was a cease-fire, thank goodness that, as Jim Cavanaugh described so graphically yesterday, they were able to get agents like—wounded agents like Kenny King out of there before he died. But I think to infer that there's something redeeming about the fact they didn't kill more ATF agents is ridiculous.

Mr. SCHIFF. You don't agree, then, with Dr. Stone that they could have killed more if they had wanted to?

Mr. JAMAR. I think they could have killed more, without question. I think they killed as many as they could until the cease-fire. I don't think there's any question about that.

Mr. SCHIFF. It true that all the agents who died were on the roof, as Dr. Stone——

Mr. JAMAR. Not so. One agent was shot out front, behind a van. Another one shot behind a safe, both shot right in the head.

Mr. SCHIFF. Thank you for clearing that up.

I would like to ask about your testimony from yesterday. When the issue was whether the FBI was correct in moving to try to end the siege or should have waited, I believe that you personally said, I would have waited a year if I had anything to hang a hook on with that. Do you remember saying that?

Mr. JAMAR. Yes, sir.

Mr. SCHIFF. What would it have taken for you to wait further? What would you have expected?

Mr. JAMAR. That as far as—let's use the preparation of the manuscript as an example that we are preparing to finish, we're going to send the disk out in 2 hours. Steve Stoner said, I just received it, I'm editing it, I may not get it to you until tomorrow, but I am definitely editing something, we've got something.

Mr. SCHIFF. If you had believed that time is running short, if you had believed that when he finished the manuscripts he would have come out, would you have waited and not recommended the attack?

Mr. JAMAR. Absolutely.

Mr. SCHIFF. Well, let me ask, then, what about the abuse of the children, sexual abuse or other abuse that was going on inside the compound, in your judgment? I have been told that that was a reason for advising a forceful end of the siege. If that was a reason for ending the siege, why would you have waited for Mr. Koresh to have finished his manuscripts, if you believed he would really have come out?

Mr. JAMAR. Well, I think if I would have believed—if he was giving me something such as a manuscript, let's get that met. One of the fears I had was he was never going to do that, and when he was through with the manuscript then he would do something provocative.

However, let's use the children. Let's say we asked for a tape of the children to force them to clean the children if they weren't already cleaned, show us that they're nice and healthy, show us that. If that would have been the case, if I said, wait a year, if they would have given us some children, show us that these children are healthy, show us that the inside, that the sanitation and the threat

of disease is not what we think it is, demonstrate that to us by sending people out who were in good health.

Mr. SCHIFF. But just to conclude, you are now saying that if Mr. Koresh really in your judgment was going to come out after writing his manuscript, you would have given that additional time even though previously it has been said that because of abuse of children, not neglect, but of actual sexual assault and child rape, we have to move fast, and I don't——

Mr. JAMAR. Well, don't isolate the one reason. The threat of the children's health, the threat of disease, and the fact we would—could very easily infer that his previous abuse would continue, was one factor. There were—there were many, many factors. That was just one.

Mr. SCHIFF. OK. I think my time is expired. Thank you, Mr. Chairman.

Mr. ZELIFF. The Chair now recognizes Mr. Scott from Virginia.

Mr. SCOTT. Thank you, Mr. Chairman. We went over some of this yesterday, and I just want to reiterate.

Mr. Betz, what is your position with the FBI?

STATEMENT OF ANTHONY BETZ, ASSISTANT SPECIAL AGENT IN CHARGE, FEDERAL BUREAU OF INVESTIGATION, BALTIMORE DIVISION

Mr. BETZ. I'm current—I'm currently the Assistant Special Agent in Charge of the Baltimore division.

Mr. SCOTT. And do you have any special expertise in CS gas?

Mr. BETZ. I have operational expertise as a Marine officer, a police officer, and 5 years with the Hostage Rescue Team.

Mr. SCOTT. Is it used very often?

Mr. BETZ. It's quite commonly used in law enforcement, has been—it's been commercially available I believe since 1958.

Mr. SCOTT. Do you know of any deaths that have occurred as a direct result?

Mr. BETZ. No, sir, I don't. There is still no documented death that is unequivocally attributable to CS.

Mr. SCOTT. Now, are there other gases, so-called tear gases, are there alternative gases?

Mr. BETZ. Yes, there are.

Mr. SCOTT. CN?

Mr. BETZ. Yes, sir.

Mr. SCOTT. And OC?

Mr. BETZ. Yes, sir. CN—the Bureau does not maintain CN in the inventory because there are deaths that can be documented, scientifically attributable to CN.

Mr. SCOTT. What about OC gas?

Mr. BETZ. I'm sorry, sir?

Mr. SCOTT. OC, pepper spray?

Mr. BETZ. Oleoresin capsicum.

Mr. SCOTT. Has the safety of that been documented?

Mr. BETZ. Nothing's been nearly extensively studied as CS.

Mr. SCOTT. Is there any question amongst experts as to which teargas is the safest?

Mr. BETZ. There is no question among experts who I've contacted that CS is by far the safest and most extensively studied.

Mr. SCOTT. So if gas were to be used, there would be no question amongst experts which gas it ought to be?

Mr. BETZ. There's been no question among experts that I've contacted. Based on last night, I think there would be questions, depending on your experts.

Mr. SCOTT. Now, the plan to insert the gas and the amount of gas inserted, is there any question whether or not a lethal amount of gas was inserted into the compound?

Mr. BETZ. There is no question based on calculations that I observed over many hours, performed by British scientists, given the knowns at Waco, that being the volume of the building, the ventilation, and in fact the ventilation was very much understated when Dr. Rice, in testimony last night, said what really happened. What he was referring to was we based all our calculations on low ventilation, just to ensure an extra safety factor in the calculations. But anyone who knows the conditions over the 51 days, and including that day, would know that in that area of Texas there is a steady wind commonly through the day, so low ventilation was unrealistic. But we still used that.

Mr. SCOTT. Now, everybody knows what ended up happening at the end. Who was involved in the actual decision? Mr. Jamar, you were involved in the decision to go forward?

Mr. JAMAR. Yes, sir.

Mr. SCOTT. What did you—did you expect what happened to have happened?

Mr. JAMAR. No, we feared it; we didn't expect that.

Mr. SCOTT. OK.

Mr. JAMAR. We were hopeful that the CS gas would drive them from the compound.

Mr. SCOTT. So you knew there was a chance that Koresh, because of his beliefs, might use the opportunity to kill everybody?

Mr. JAMAR. Yes, sir.

Mr. SCOTT. What—you knew that was a possibility?

Mr. JAMAR. We feared that, yes, sir.

Mr. SCOTT. What weight was given to that possibility?

Mr. JAMAR. Tremendous weight. That was why we took so long to come to that decision.

But there was the other side, as we discussed yesterday, is that do we let him determine when he was going to do it and what measures could we take, such as 2 o'clock in the morning, there was a breakout with a child under each hand, everybody's firing, or starting a fire or whatever it might be, what measures could we take at that time when we're not prepared.

The idea was to try to do this in the safest manner, was to do it where we were best prepared and with the medical care and everything we had available there. And the theory on the gas is that we would do it incrementally and make the place uninhabitable. The thought that people would be breathing gas for 48 hours was not correct. The idea was they would move away from the areas where gas——

Mr. SCOTT. What are the chances—what chance did you give to the possibility that they might die as a result of what you did, as they might be rescued as a result of what you did?

Mr. JAMAR. Well, I think that we wouldn't have done it if we didn't think that the odds of their being rescued outweighed the fear of mass murder, suicide. We—what we were trying to do was preempt his, his being Koresh, deciding when it was going to happen. What he did, he decided it was going to happen on April 19. But I am firmly convinced that ultimately that end would be there, but we thought our opportunity to save lives was best if we dictated when an action was taken, not Koresh.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. ZELIFF. The Chair now recognizes Mr. Souder for 5 minutes.

Mr. SOUDER. I wanted to say for the record that I am getting tired of Mr. Schumer questioning to the point of smearing us about our commitment to law enforcement. Mr. Heineman was chief of police in Raleigh, Mr. Bryant was a U.S. attorney in Tennessee, Mr. Shadegg was an assistant attorney general in Arizona, and Mr. Barr was a U.S. attorney in Georgia.

I have never been a defense attorney in my life. In fact, I bragged in my campaign that I am not an attorney. I have always been committed to law enforcement. We are trying to ask questions. I am sorry if in the process of asking questions, what happens in the Rodney King case and in others, that sometimes sets back law enforcement because there is so much focus as you are trying to sort through the different process, but it isn't going to intimidate me from trying to get to that point and I hope you realize that it is not helpful to those of us who have been long committed to it, to our support for it, to be constantly accused because we are trying to do our job in oversight.

Mr. Betz, I wanted to ask you some questions. Understanding that you are predominantly a tactical CS expert and not a scientific, can you perhaps at least answer for me and explain if you didn't directly, who would have directly and what went to the people who made the decision regarding the gas, what did you take into consideration of the dangers of gassing children? Was it that it is OK to gas them, that no evidence exists that shows it is dangerous, or that in fact evidence exists that shows that it isn't dangerous? What was the discussion around the gassing of children and how was that debated internally?

Mr. BETZ. Yes, sir. The discussions I had were primarily with Dr. Harry Salem, from the U.S.—U.S. Army Chemical Research Development and Education Center, Edgewood, MD, which is the singular center, to the best of my knowledge, in the United States for expertise in that area. And children were very heavily discussed and I read, attempted to read every paper Dr. Salem gave me. And he certainly read, I believe he queried almost 500 individual research reports. In those reports, including the Himsworth Report that was mentioned last night, there were references to children who had been exposed.

In Great Britain, those children who were exposed in enclosed areas, recovered upon exposure to air. In the instance that was mentioned last night, which was the Park and Iammona, in a study in 1972 in California, I'm also familiar with that report. And that child was admitted to the hospital and recovered with antibiotics in 28 days. And that was in all the research that has been cited,

including by Dr. Stone, that was the only instance of a child being admitted to the hospital that I'm aware of.

Mr. SOUDER. Is it standard operating procedure, as you are inserting the gas gradually, to do it over several days?

Mr. BETZ. That would actually add quite a safety factor to inserting gas in any situation.

Mr. SOUDER. Had you discussed in your briefing that you might sharply accelerate that process if the tank was fired upon?

Mr. BETZ. What I'm familiar with is that there was also a backup plan, that if the tanks were fired upon there was an alternative plan to utilize ferret rounds in addition to the insertion points.

Mr. SOUDER. And did—did the discussion when you were talking about the impact of gas on the children, calculate that if you accelerated the process, that it would potentially have more impact, and also could you talk a little bit about did you discuss the disorienting impact on the parents and their children as to whether they would be able to see and get nauseous, be able to find their way out?

Mr. BETZ. Yes, sir. That was discussed very much, and I questioned Dr. Salem on that myself. And I went over the most common effects of CS. And there is an effect that causes you to blink extensively, but the most common effects and the effects that it's intended to have are sensory, irritant effects, which is what we desired. There's no effect there, that I'm aware of, that would cause someone to not be able to escape the environment, which is actually the intention.

Mr. SOUDER. Mr. Jamar, I was really interested yesterday, I think you said seven of the nine people who did in fact come out either came out through one of the holes or were directly rescued.

Does that suggest—did anybody come out through the routes that you thought they were going to come out?

Mr. JAMAR. Well, no one came out that looked like to me compelled by the gas, teargas. I didn't see that. But I don't know of the nine whether how much gas that they touched. I don't know that.

Mr. SOUDER. My question is, is that because the walls were knocked down? You said that is how many of them got out. Does that suggest that they couldn't find their way out otherwise?

Mr. JAMAR. No, the only point there was that the front door—I think the context of the question was why did you knock holes in the walls; that was the context—was that the door is blocked, the door, the front door that they used all the time, we discovered, by trying to open it, we were wondering why aren't any people coming out, so we had one of the CEV's push the door and we discovered it was blockaded. So we made another door. We couldn't see at the back, there were doors out the back, and we could never get in there by the pool.

The picture is here, but you remember what I'm talking about, the swimming pool, we were afraid to go in there because the concrete was so weak and the heavy weight of the tank would maybe fall in there. We made a hole in the back.

Mr. ZELIFF. The gentleman's time is expired. Mr. Conyers, 5 minutes.

Mr. CONYERS. Thank you very much, Mr. Chairman.

Gentlemen, just one word, an observance of the nature of these hearings across this week.

No one on either of these two committees has been a more forceful critic of law enforcement than myself. I have been doing it more often and longer than anyone on the committee. I talked to Secretary Rubin and Under Secretary Noble about the Old Boys Roundup and the environment in ATF, which is more important than the event itself, that leads to these things being summarily happening. I talked to three or four FBI Directors in the course of my career about the discrimination in employment. I have been talking to Ms. Meissner in Immigration and Naturalization Service about the longest outstanding and largest class action suit that African-American agents have brought against any Federal agency in history, and we are trying to take care of that. I go back on U.S. attorneys to attorney—or Attorneys General to Levi and others.

I am shocked that the Department of Justice would try to weaken the exclusionary rule. I have opposed U.S. attorneys who try to run their trials by press release, intimidating defense witnesses and people brought before the criminal justice system. But Waco has to stand in an examination on its own merit. That is the subject that brings us here today. And I think that the whole event now has been made clear.

Here was the most massive assault on law enforcement that has ever been unleashed. Taken by surprise, pulling up all that weaponry and firepower did not intimidate Koresh and the Davidians one bit. And it is out of that tragedy and the strategies that bring us here today, and the question of gas.

And I would like to ask you, Mr. Sage, in the transcripts where you were in fact helping—they were recorded with your comments and other unidentified people inside. There was some suggestion that all of the references to do—you want it poured, it is poured already, should we light the package now, OK, light it, you got to put the fuel in there, too. This was casually dismissed, total hearsay, by lawyers that were admitting they were represented—representing Koresh, but this was referring to pouring gas in Molotov cocktails. Can you help us clear that up?

STATEMENT OF BYRON SAGE, SUPERVISORY SPECIAL RESIDENT AGENT, FEDERAL BUREAU OF INVESTIGATION, AUSTIN, TX

Mr. SAGE. It's—I believe the clear indication from a reading of the transcript would indicate that it was not—at least it's clear to me that they were preparing that compound for an apocalyptic end, unfortunately. That certainly was not our intent.

Mr. CONYERS. Were there any Molotov cocktails thrown?

Mr. SAGE. Not that I'm aware of.

Mr. CONYERS. Did you know about any inside the compound?

Mr. SAGE. No, sir, not until after assessment of the record here.

Mr. CONYERS. And finally, in terms of the strategy on the gas, I think it was Mr. Jamar—maybe Dick Rogers. There was an initial plan to have the gradual insertion of gas, but at some point it was determined that it should be introduced, excuse me, in larger quantities.

Can you help us get some understanding of that strategy there or the change of strategy that may have occurred?

STATEMENT OF DICK ROGERS, FORMER HEAD OF HOSTAGE RESCUE TEAM, FEDERAL BUREAU OF INVESTIGATION

Mr. ROGERS. Yes, sir. That was not really a change in strategy. We had factored in a contingency that should our vehicle be met with gunfire, when it went up to make the initial insertion, then the only thing we could do is to respond with additional ferret rounds of teargas in order to try to reduce the fire coming toward our vehicles.

Everyone has made the assumption that because we had military armored vehicles, that the agents inside were completely safe. And that's just not true. In order to fire those ferret rounds, there were openings in the sides of those Bradley fighting vehicles that we had actually enlarged from what their original design was for the military.

Mr. CONYERS. What was the purpose for that?

Mr. ROGERS. Well, the purpose was so that our agents could be able to aim their 40-millimeter gas guns through the openings and be able to accurately put those ferret rounds into their, into their targets. If you can shoot out, you can also shoot in, and that was our concern, with the safety of our people in there. If a round came into that Bradley, it's going to ricochet around inside that armored vehicle, and clearly we're going to have casualties along the FBI agents.

So when they started opening fire with automatic weapons, we saw green tracers coming out of that building, then we went to what we call a compromise plan, which was to go ahead and put ferrets in all those openings.

Mr. CONYERS. So insert more gas rather than——

Mr. ROGERS. Insert more gas. They forced us basically to back off of this very phased, very carefully-thought-out plan to deny portions of that building over a period of 48 hours.

Mr. CONYERS. And had they not opened fire, you would have had a gradual insertion of the gas?

Mr. ROGERS. Yes, sir.

And let me also clear up one thing. The plan was never to insert gas for 48 hours. The plan was to insert gas over a period of 48 hours, which is a big difference.

Mr. CONYERS. Talk about—just in concluding, Mr. Chairman, what is the difference there?

Mr. ROGERS. Well, the difference is we only—we were only going to put so much gas into the building. All of the calculations that the experts have used is based on putting gas into a place and measuring its effect within a 1-minute period. We're talking about 48 hours that we were going to continue this operation. Huge difference. If you take into account the wind that we had there blowing across that plain in Texas, my personal opinion is that gas had very little, if any, effect on anyone inside. I think it was quickly ventilated as soon as we put it in there.

Mr. CONYERS. Thank you very much, and thank you, Mr. Chairman.

Mr. ZELIFF. Thank you. Mr. Bryant, 5 minutes.

Mr. BRYANT of Tennessee. Thank you, Mr. Chairman. I have a number of questions and if you could keep your answers as short as possible.

Mr. Jamar, I was kind of cut off on my time last night, but did I understand you testified yesterday that the President of the United States was aware of this siege, basically siege plan, but wanted to know of any change, wanted to be made aware of any change in that strategy? Was that in your notes?

Mr. JAMAR. Yes, sir.

Mr. BRYANT of Tennessee. OK. And I assume that you assumed, by briefing Justice and the FBI, that the President—it wasn't your job to call the President and tell him you were fixing to go in with tanks, but you assumed the other folks, your superiors would do that?

Mr. JAMAR. The—we're talking about two different times, Mr. Bryant. I think at the beginning, I was told that the President said that don't do anything beyond negotiations without going back to him, unless there's an emergency.

Mr. BRYANT of Tennessee. OK. And there was never an emergency. There was never an emergency; was there?

Mr. JAMAR. From during the period—no, we didn't have one that would make us depart from that, not at all, sir.

Mr. BRYANT of Tennessee. I would interpret that to mean that he wanted to know in the future, he didn't limit that to a week or whatever, he just said unless there was a change?

Mr. JAMAR. Well, I think one of the changes that occurred was I think by March 12 we had an Attorney General now. It wasn't—remember, the normal hierarchy of an administration didn't exist when—on February 28.

Mr. BRYANT of Tennessee. Well, you had an Acting Attorney General, Mr. Gerson, and you had the transition team, Mr. Hubbell leading that, who was Mr. Clinton's——

Mr. JAMAR. But my point is, sir, had everyone been in place we wouldn't have been told the President—we would have been told the Attorney General said this. There's a huge difference in my mind.

Mr. BRYANT of Tennessee. But you are not saying the President was dealing directly with you?

Mr. JAMAR. No, sir. My point is, in the normal times, like today, if something like that occurred and there were special instructions from the Attorney General or from the President, it would be to the Attorney General. They would be forwarded to me that the Attorney General said do this.

Mr. BRYANT of Tennessee. OK. Let me move on, if I could.

I have got another question for you, Mr. Jamar. Ms. Sparks from the Texas Human Services Department testified that she had been asked by the FBI to plan a contingency plan for showers and stuff to clean these children after they were gassed. And right before this occurred, this was canceled. Do you know why she was—this idea of having medical aid and showers for children?

Mr. JAMAR. No, the decontamination of everyone coming out was there, it stayed in place. The survivors were decontaminated.

Mr. BRYANT of Tennessee. By FBI?

Mr. JAMAR. No, by medical personnel.

Mr. BRYANT of Tennessee. But the Texas people were not used, that was my point. She left the impression with me that this contingency plan had just been canceled, at least as far as her involvement.

Mr. JAMAR. That's not correct.

Mr. BRYANT of Tennessee. OK, thank you.

Mr. Potts, did you play a role in the formation of this plan that included the gas insertion?

STATEMENT OF LARRY A. POTTS, FORMER ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr. POTTS. Yes, sir, I did.

Mr. BRYANT of Tennessee. OK. And do you—what information, and I guess and how frequently, did you pass on this information to the Department of Justice?

Mr. POTTS. That's—that's not an easy question to answer in short term. I mean, in terms of formation of the gas plan, I think that Mr. Jamar first contacted me probably around March 27 or somewhere near the very end of March, to indicate that such a plan was being submitted. There were extensive internal discussions that went on for a period of a couple weeks.

Mr. BRYANT of Tennessee. OK. Now let me move on. Internal to the FBI?

Mr. POTTS. Yes.

Mr. BRYANT of Tennessee. Was April 12 the first time that Justice, main Justice, knew about this plan that included the gas insertion; was that the——

Mr. POTTS. I am not sure——

Mr. BRYANT of Tennessee. Was that the first date?

Mr. POTTS. I'm sorry. I'm not sure that April 12 was the first time they knew. It was the first time we had briefed them. I believe that they knew as a result of a visit that Floyd Clarke, the Deputy Director and I had made, to Waco on the 7th and 8th, that discussions were being held regarding possible insertion.

Mr. BRYANT of Tennessee. Who is they in Justice knew this?

Mr. POTTS. Oh, I'm sorry. Well, I think that—first of all, I think there was Mark Richard. There was Mr. Reynolds, Jim Reynolds. There was Mr. Hubbell. And eventually the Attorney General probably knew as of the 9th that there were discussions going on within the FBI. And we had asked then the Director, Director Sessions at the time, had asked on the 9th of April for a meeting with the Attorney General on the 12th, to brief her on what our plan was.

Mr. BRYANT of Tennessee. Thank you very much. I believe my time is up.

Mr. ZELIFF. Mrs. Collins.

Mrs. COLLINS of Illinois. Thank you, Mr. Chairman. I yield 30 seconds to the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Jamar, in response to my last question, you indicated that you knew that there was a real chance that loss of life might occur, but you believed that the catastrophic ending would eventually occur some time.

Mr. JAMAR. Based on his conduct on the 19th.

Mr. SCOTT. I would trust that you would have more than just speculation to justify your action and have a solid foundation for your belief that the risk of loss was justified.

I am going to just pose the question, I don't want to take any more of Mrs. Collins' time, but as you answer the other questions I would be very interested in what kind of foundation you had for that belief to justify the loss of life. And I thank the lady from Illinois for yielding.

Mrs. COLLINS of Illinois. Thank you.

Yesterday we heard from yet another witness, Dr. Alan Stone, that representatives of the National Rifle Association contacted him posing as a staff member of this committee. The chairman of the Government Reform and Oversight Committee has declined my repeated request that we call individuals to testify as to their activities which may have interfered with these hearings.

As a Member of Congress, I fully believe that we have an obligation to ensure that allegations of unethical or illegal activities are investigated, particularly when they affect a congressional hearing. Because the chairman has not responded to my last request to pursue these allegations, I intend to forward this information to the U.S. attorney for the District of Columbia for review for possible criminal violations, because I think it is extremely important that we do so.

Let me say this, too. I am concerned about the decision to use gas in the compound, not because I believe that either Koresh's followers were coming out on their own, but because there were children in the compound. Any time children are exposed or to be exposed to a chemical such as tear gas, I certainly want to know about it.

The thing that concerns me the most about this, however, is that there has been conflicting issues here. So the issue that needs to be addressed is the alternatives that were available to the FBI. First, would the children have been safer staying in the compound while other options were pursued, or was exposure to gas the safest option? And I am going to ask whoever wants to answer that one, Mr. Jamar?

Mr. Jamar.

Mr. JAMAR. As I tried to describe earlier, the concern we had was that starting in around the 24th, 25th of March there, that we thought that negotiations were at an impasse. There's no indication of anything at that time in the short term changing anything, that he would begin to let people come out or he would change his attitude in any way.

So we said what are our options, what options do we have to prevent him from causing the deaths of those people inside. Law enforcement has very limited options that are nonlethal. We never contemplated assaulting the compound and making an entry absent indication that he was systematically killing people inside there. We never contemplated that situation.

The options left to law enforcement is limited to insertion of CS gas. That's just about it.

We started discussing, well, if he decides on his terms that he wants to destroy those people inside, how would we stop him. We would stop him with CS gas. So we said, well, to keep him from

doing that on his terms and his timetable, then maybe the best thing to do is to try to preempt that by driving the people from the compound by the use of CS gas.

Mrs. COLLINS of Illinois. Attorney General Reno made the decision to allow the insertion of CS tear gas only after meeting with a number of experts outside the Department of Justice. And one of those was Dr. Harry Salem who was an expert on the use of tear gas in the Department of Defense and a witness who was scheduled for this panel.

I would like to ask Mr. Rogers about that meeting. I want to know what the questions were that the Attorney General asked about the use of gas against the children and what advice Dr. Salem and the other members of the meeting gave her, please.

Mr. ROGERS. Yes, ma'am. I was at that meeting. Attorney General Reno quizzed Dr. Salem very extensively. She was extremely concerned about the children.

She asked a number of probing questions of the doctor. He responded that—and I don't want to speak for him, but my memory of that meeting was that basically there had never been a documented case of a child or anyone else dying from CS tear gas, that the military had done extensive testing on it. And basically he allayed her fears that the CS tear gas was toxic or that it would kill anyone inside that compound, particularly in the amounts that we anticipated putting in there.

So my impression in walking away from that meeting was that she was satisfied with the answers she got from the doctor and that we had reached out to what we thought was the very best and legal expert—I mean, not legal expert, scientific expert in this area in the United States and he had provided those answers to her.

Mrs. COLLINS of Illinois. Thank you.

Thank you, Mr. Chairman.

Mr. ZELIFF. Thank you.

Chief Heineman, 5 minutes.

Mr. HEINEMAN. Thank you, Mr. Chairman.

Mr. Potts, on February 28, what was your position in the hierarchy?

Mr. POTTS. I was the Assistant Director of the Criminal Investigative Division, FBI headquarters.

Mr. HEINEMAN. Were you Mr. Jamar's direct connect with the hierarchy?

Mr. POTTS. Yes, sir, I was.

Mr. HEINEMAN. Who were you responsible to?

Mr. POTTS. I reported to Doug Gow, who is the Associate Deputy Director.

Mr. HEINEMAN. And as per yesterday's testimony, Mr. Jamar said he spoke to you frequently as to the situation in Waco.

Mr. POTTS. Yes, sir.

Mr. HEINEMAN. I just wanted to—I was cut off by the red light yesterday at Mr. Jamar's level.

Mr. Jamar, I spoke to you yesterday and asked you about the siege situation as to whether you considered that a hostage situation.

Mr. JAMAR. Yes, sir.

Mr. HEINEMAN. And your response to me was, no, you considered that a barricaded criminal situation.

Mr. JAMAR. Yes.

Mr. HEINEMAN. And certainly it was. There were barricaded criminals in there. Mr. Rogers, and I would ask Gary Noesner if he was here, did you have a protocol for barricaded situations where there are children involved at that time?

Mr. ROGERS. We do not have written protocols that you go to, and I'm not trying to be flip, but as a recipe book where you pick a particular situation and you flip to it and we've got written contingency plans specifically. Everything I've been involved in in 25 years in the FBI is almost unique in itself. Every hostage barricade situation is different.

Mr. HEINEMAN. A lot of variables.

Mr. ROGERS. A lot of variables, a lot of—generally different people different situations and it's all variable.

Mr. HEINEMAN. I realize you have to, as they say, go by the seat of your pants at a lot of these situations because of variables and certainly——

Mr. ROGERS. Well——

Mr. HEINEMAN. And certainly we are looking to improve the process.

Mr. ROGERS. Yes, sir. I wouldn't classify it as seat of our pants. We have very extensive training of our personnel. We have very good intelligence staff and when we make a decision, it's not a seat-of-the-pants decision.

Mr. HEINEMAN. But you have to make the decision based on the variables.

Mr. ROGERS. And the facts at hand, yes, sir.

Mr. HEINEMAN. Right. And hopefully, hopefully, based on what we've learned here yesterday and what we will talk about the next couple of days, the use of CS gas and any other type ordnance as it relates to the children.

I hope that your Section of the FBI, the Training Section, has taken everything and will take everything that's mentioned at these hearings into consideration and develop some kind of a greater sensitivity to infants.

Now, certainly you don't know how CS gas affects children. I think there was testimony last night amongst the Ph.D.'s that none of them knew how CS gas would affect a child under two. But I think that's something we need to seriously think about in light of what's happened.

I don't know how it affects children, so I was in no better position to judge that than Mr. Jamar or Mr. Potts or his superiors. But I would like to think we could leave here with the lesson learned to give great consideration even if it's experimentation—not experimentation, but further study into the effect of ordnance on even small children.

And I will yield the balance of my time to Mr. Souder.

Mr. SOUDER. There's not much time left.

Mr. Jamar, you seemed—it seemed pretty predictable that they were going to fire the tanks, and didn't it seem predictable also they were going to barricade the door? Was that the primary place you thought they were going to come out?

Mr. JAMAR. Well, the—if they believed we were going to try to enter the compound and the way the overhear sounded, like there was one comment, "We're going to wait before they come in before we light this." There was a comment on the overhear. I don't think they'd have had the door barricaded because they wanted to come in. Their idea was to keep people from going out. Not to keep us from coming in, to keep people from going out.

Mr. SOUDER. That was fairly predictable and didn't——

Mr. JAMAR. I don't think it was necessarily predictable. I'm just saying it's easy to conclude that after the fact.

Mr. SOUDER. Well, we have all kinds of things that say——

Mr. JAMAR. There were other doors, too. To get back to your first thing about them firing on them, I believed it was 99 percent when we approached with the tank they would fire. I believe that. Not all people agree with me on that, but I believed that at the time, yes.

Mr. SOUDER. Thank you.

Mr. ZELIFF. The gentleman's time is expired.

Ms. Sheila Jackson Lee from Texas.

Ms. JACKSON LEE. Mr. Chairman, thank you very much and good morning to the gentlemen that are here with us this morning.

Let me make a couple of remarks before I ask my two very abbreviated questions.

I hope as we continue to unfold the facts in these proceedings, and we're now almost to an end, we can keep before us two procedural problems at the fore. That is that we are fact finders bringing to the table, whether they are witnesses or whether we are Congresspersons, our own biases and insight and review.

The second point is that we owe a responsibility to the American people to be problem solvers and that the only way we can do so is to probe your minds and to try to understand what went on. We were not there. We've heard a discourse of different voices about who is believing what or what side of the aisle is more pro-law enforcement or not.

Interestingly, the irony of voices from the American public, maybe people who would have said completely different things if we were having a hearing on the NRA, now making strange accusations because they think people are biased. But if we can keep before us those two prongs, facts as best we can with human frailties, and then to resolve it, I hope you will give me your true and honest answer—you're obviously sworn in, you're obviously law enforcement officers—so that we can keep that before us and as well make good of these proceedings which I believe have started in the best interests of the American public.

But I would simply say to you that those of us who have been accused one way or the other can say certain points about law enforcement. Do I agree with the COINTELPRO that permeated the civil rights movement some years ago? No.

Was I skeptical about the onslaught of law enforcement in the peace movement, student peace movement? I raised my voice of opposition.

Was I satisfied that the Black Panthers were truly conspirators to undermine the Government? No. So I raised my voice in concern of that.

Or the worst of all evidenced by local police in the filmed version of what happened to Rodney King. Did we raise our voices against that? Yes, we did. And I'm certainly against in local communities young black men being arrested for walking on the wrong side of the street.

However, I think we need to be balanced and so I think it is important that we acknowledge the efforts that have been made when young freedom riders rode into the Deep South that they had to rely upon Federal law enforcement to protect their rights, carrying forth the Bill of Rights and the Constitution. I think we have to realize when bright African-American students tried to enter universities in the Deep South, Federal law enforcement had to provide that safety net.

I think we also need to acknowledge when a very vital voice to our entire community, this Nation, was silenced by a deadly force, Dr. Martin Luther King, we didn't know whether this Nation would be able to withstand that blow along with the assassination of President John F. Kennedy, the assassination of Bobby Kennedy and, yes, the attack on Ronald Reagan, Federal law enforcement had to take its role.

So I think when we begin to look at this issue, let us balance the good and the bad. And my question that I would like all of you to answer, twofold again, on the CS gas, was there effort to provide an opportunity for those children and those women and those men to come out? Tell me the plan.

And, two, why did you not wait? Taxpayers dollars or not, why did you not wait?

Mr. Potts, and I would like all of the witnesses answer those questions, please.

Mr. POTTS. First of all, CS gas was chosen because we believed it to be the absolute least harmful of any gas, that it would not be harmful to the children, that it would not be harmful to people in there but it would drive them out of the house.

You have to understand that when this plan was first formulated and we talked about the impact on the children, we went to experts to find out how will this impact on the kids. And even after finding out from the experts that they didn't believe the CS gas would be harmful to the children, we then put in certain other aspects in the plan which would build in extra safety aspects for the kids.

For instance, there was very active discussion when Mr. Clarke and I went to Waco to talk about how this plan was going to go about. Dick Rogers of HRT was very concerned, as you just heard, about the safety of his people being fired upon. If they started firing from inside the compound, his people were going to be very much exposed to that. They would—if they would have had the perfect plan for them in order of safety for the HRT agents, it would not have included an advance warning because that just gives people a chance to get their weapons, to aim and to be ready.

Ms. JACKSON LEE. And you might have to aim back and shoot and kill someone.

Mr. POTTS. That's right. That's right. And so the advance warning was something that we talked about an awful lot as to whether—how much safety are we giving up for the agents. But we did that advance warning because we wanted to make sure that they

knew what we were doing and to give them a chance to get the children and bring them out of the compound.

Now, if you say, well, why should they take them out of the compound at that point; what if they said, we're not going to leave this compound. The other thing that we talked about and discussed was that during a several-hour fire fight that you heard described so graphically the other day by Mr. Cavanaugh, during that entire fire fight, not a single child was harmed. All those bullets that were going back and forth and not one child was harmed.

Where were the children during the fire fight? Children were probably in some place that was safe. You give them an advance warning, they can either bring them out of the compound or they can put the children somewhere that's safe. That was another safety aspect that we thought about that would give them a chance to save the children from any exposure.

The third aspect of that plan that I think was built around safety to the children and not safety to our agents—safety to our agents, the best would have been to put all the gas in at one time. The military advised us of that. HRT advised us of that. And several of the SAC's on site absolutely demanded that it all be put in at one time for the safety of our agents. You're going to get an agent killed if you try to do this thing incrementally.

But again, for the safety of those people inside and particularly for the safety of the children, we decided that what we wanted to do was not try to bring this thing to an end on April 19. April 19 was not any kind of a D-Day where we said we've got to end this thing right now. April 19 was to put some gas in one portion of that compound and then back away.

They can go to another part of the compound. They can go to another place that doesn't have gas, but what it does is hopefully begin to limit the area of that compound that they have access to and at the same time provide an opportunity for some of those people who are inside to come out. An excellent chance for that to occur. The rules of engagement during the operation itself, and I'm sorry I'm going on, but all of this I think——

Ms. JACKSON LEE. Go ahead, Mr. Potts.

Mr. POTTS [continuing]. Is important for the children. The rules of engagement, when we started to put the gas in, the Attorney General talked to the Director and to Floyd Clarke and to everyone else and said I want special rules of engagement to make sure that we go out of our way not to gas the children. So if you see a child in one particular area where you were going to put gas in, don't put gas in that area.

You don't have to stop the gassing operation, but move to another area of the compound. If you see a child being threatened or if they say if you put any more gas in this compound, the children are going to die or we're going to kill the children, any indication about danger or harm to those children, the rule was back off, get away, stop.

Our hopes were to gas part of that compound, move them to another part of that compound, and move negotiations along. If not a single person came out, if it made David Koresh begin to negotiate with us again in earnest and stop trying to manipulate everyone, we thought that it would be a success.

Every one of those things was for the safety of the children and to limit—what Mr. Jamar talks about, you know, I wanted to make sure—he said, I thought that maybe they were going to fire. There's a good likelihood they were going to fire on our tanks. We did everything we could to limit that possibility.

Because of the way that we had done this entire operation, every time we got ready to go up to the compound with a tank, we told them we were going up to the compound with a tank. If we were going to move cars, we told them we were going to move cars.

When we got to that last piece of fence in front of the compound, most of the people said they are going to fire on you if you try to try to move that fence. Well, we moved that last piece of fence on the 18th and no one fired.

In fact, there was very limited reaction on the inside except when we moved David Koresh's Camaro. When we moved his car, he became very upset, but not the fence. We bumped up against that compound with a CEV just days before the gassing operation and there was no violent response, because everything we did, we told them what we were going to do in advance and we were honest with them.

We were honest with them that morning. We gave them an advanced warning. We then—we moved up with only one tank to insert gas in one section. And regretfully they fired on us immediately. Our response rather than firing back was to put gas, to try to suppress the fire, and protect our agents.

Ms. JACKSON LEE. All the gentlemen——

Mr. ZELIFF. Let me just interrupt for a second.

Sheila Jackson Lee, I appreciate your intent here. Before this gets out of hand, I just want to ask you if you could, the idea is to ask a question.

If you're in the middle of question, the red light goes on, we don't want 15 minutes to ensue and if you can try to keep the questions in such a way and the answers in such a way that we can keep within the integrity of the 5 minutes. We can go over a little bit but we don't want to go over 10, 15, 20 minutes.

Ms. JACKSON LEE. Mr. Chairman, I appreciate your kindness. I would like the other gentlemen to give their answers.

Mr. ZELIFF. That is fair. I just want to make the point we try to keep the intent to the 5-minute rule.

Ms. JACKSON LEE. Mr. Chairman, in keeping with, I would like the other gentlemen to be reminded of my question of why you did not wait and I did hear part of that with Mr. Potts.

Thank you very much.

Mr. JAMAR. Mr. Potts gave a very comprehensive answer.

Another thing I would add to it is that part of the plan and discussion we had was—another thing we didn't want to do was to indicate to Koresh that we're there to fulfill part of his prophecy by entering the compound.

So we kept—we had the concertina wire around. We kept the Bradley vehicles outside the wire. They could clearly see—because it's lighted they could clearly see the Bradleys were not going to come inside the wire. They could see that.

Only one vehicle approached the compound. That's not an indication of a bunch of people coming in. A tank doesn't hold that many

people. There wasn't anybody around the tank, just the one approaching.

And we told them what was going to happen: This tank is going to come up. It's going to insert gas at the time. Just come on out. We can discuss this. You know, communicate with us. That was—part of that was the safety concerns, but also to communicate to the compound, we are not entering the compound. We are not fulfilling this prophecy. Don't presume that.

The reason we didn't wait was the thing I've tried to say several times—I'm not saying it well enough—is that—from his actions on the 19th when he made—when he had some of those people killed by gunfire, others died in the fire by not being able to leave, which I think they were concerned, most of them, over their salvation, that was his hold over them, is that he would dictate when that occurred.

His actions—we were hopeful he would not kill all those people, but his actions on the 19th convinced me that that was his plan all along. I always thought he would try to survive himself and everybody else would be dead and he'd come out. That's how much I think he cared about himself. But by his actions on the 19th we were—we feared mass suicide but we thought we could prevent it with the gas.

So but I still thought there was a chance. I wouldn't have done it if I thought there would be suicide.

The other thing is, if we waited, he would do it on his timetable. That's why we didn't wait any further. If it had been one thing, Ms. Jackson Lee, that would indicate to us of a change in attitude, the smallest thing. That's why we kept staying for another week. He'd tell us, why don't we'd try it again. We tried and tried and tried. So the reason we didn't wait any longer was if he would decide when it would happen.

And I think the other point I want to add on the gas is we would not have gone with CS gas if there was any indication to us that it would permanently harm those children.

Ms. JACKSON LEE. Mr. Rogers.

Mr. ROGERS. Ms. Jackson, I think that maybe I need to give you a little better understanding of my feeling as to why we needed to initiate something like this as opposed to just continuing with the status quo.

We looked at the options. What could we have done other than continue with the waiting. Well, one thing we could have built a wall or put wire around that compound, as some people have suggested. And I think that doesn't take much explanation to understand that's totally unacceptable and let's just pull back.

We could have done a nighttime assault where we actually had to send agents in. We calculated that there would be loss of life to both our FBI agents and most likely to Davidians, perhaps some children, if we had to take that approach which some people have suggested and I've been faulted for, by the way, for not doing that.

And we could have inserted nonlethal CS tear gas, which in my experience has been more or less the standard by which law enforcement—standard tool by which they use to end a barricaded situation.

The other reason is that by continuing with this waiting and having David Koresh initiate something, I only had between a third to a half of my resources physically around the compound at any one time. For example, I would normally keep one or two physicians there in the medical triage area. On the morning of the 19th, I had 12 physicians there. We had probably the largest law enforcement medical contingency set up near that compound that's ever existed, over 13 paramedics.

We had airlift capability with 3 Chinooks where we could take out 35 people at one time to hospitals. We had the entire hospital network within that part of Texas alerted, the waiting room set up in case there was an explosion or there was some kind of suicide. So massive preparations had gone in to ensuring that if something were to happen that we would be able to handle it and try to reduce the loss of life.

If he were to come out at 2 in the morning, we wouldn't have had those things there. So that's the reason that in my opinion we needed to go forward and try to move on this.

Contrary to what you've heard, when I heard that David Koresh was coming out, quote, unquote, after he translated the seven seals; in my opinion, he was never coming out. Instead of being hopeful, to me that was the final straw that he has no intentions of coming out because we had lived with every promise that he had broken for over 7 weeks.

Your other question was about openings for people to get out of. When we inserted that gas around 6:02 in the morning, they didn't know the gas was coming. We do not believe that that front door was blocked at that time. I think that front door was blocked later in the morning. We saw the front door open several times during that morning and we knew it wasn't blocked except later in the morning sometime after 10:30 when we went ahead and opened it up.

But we had planned to make openings in that building for escape. If there were people in there who were being held against their will, we wanted them to have the physical ability to get out of that compound. So that was factored into our planning all along.

Ms. JACKSON LEE. Mr. Sage.

Mr. SAGE. You mentioned a need for accountability. I think everybody that's here and has been here welcomes this opportunity, frankly. I will try to make my responses brief because of concerns for time.

Two questions: Effort and why we didn't wait.

From a negotiation standpoint, I've never been involved in a situation where so much effort was brought to bear, so much effort was so thoroughly explored. Every viable option that was presented to us—and I stress the word "viable"—was pursued. We did not turn away anything that could have led to a peaceful surrender of those individuals and extraction of all of them, not just the kids, all of them, but certainly the kids as a top priority.

Why didn't we wait? We've heard several times here that we waited for 51 days. A key thing to remember in the mindset of all of us that last day was that we had not had a child, our top priority, we had not a child to exit that compound in 45 days; 45 days. We had not had a Branch Davidian exit that compound in 32 days,

which is probably, I was going to—well, it was probably 32 times longer than most sieges would have lasted.

This was an extraordinary situation. I hope it doesn't become a precedent-setting situation for the time spent. CS gas, the introduction of CS gas from a negotiations standpoint did not herald the end of negotiations. I mentioned this yesterday. We intended to continue to negotiate with David or Steve or anyone in there that was willing to talk to us and facilitate a safe and orderly exit.

The last thing I would like to say is that it was never my understanding—and I don't think it was our understanding collectively—to expose these children or anyone else for an extended period of time. The intention of sending in the CS gas, which was embraced by the negotiation team on the 22d of March, was to initiate or to prompt a rapid exit from that compound, not to prolong anybody's agony or exposure.

And I've been in that situation, as I mentioned yesterday. I would have been out in a New York minute.

Ms. JACKSON LEE. Mr. Betz.

Mr. BETZ. Yes, ma'am. I wasn't involved in any meetings or decisions concerning wait or don't wait, so I have to limit myself to what was provided to leadership as far as factors would be and that would be concerning CS. And the expert advice that was provided and that I was shown clearly was that it would be virtually impossible outside of an ideal laboratory situation to insert enough CS to create risk. And that's the bottom line on the advice that was provided.

And given the conditions at Waco, it would have been several times removed from or maybe hundreds of times removed from that laboratory condition. So to even attain a risk factor, by at least a couple of research studies, it was virtually unattainable outside that environment and that's the kind of advice that was provided to our leaders.

Ms. JACKSON LEE. I thank the gentlemen and, Mr. Chairman, I yield back the balance of my time.

Mr. ZELIFF. I just would like to—you don't have any time to yield back, but again, I think I would like to reestablish the rules that we both worked out on both sides. I think the questions you asked were great questions and I think the answers were great answers, but if we are going to keep control of this process here, because I know our guys are just itching to get even and I'm encouraging them not to do and we're asking everybody to use a little common sense, tighten up the answers and, if we can, we will keep this under control.

I would like to announce that Dr. Harry Salem has joined the panel. He's the Chief of the Life Sciences Department, Research and Technology Director at the U.S. Army Edgewood Research Development and Engineering Center for the Department of Defense.

Thank you for being here. We apologize for the mixup. I guess you are going to be here tomorrow as well, so welcome. If you would stand and raise your right hand.

[Witness sworn.]

Mr. ZELIFF. Thank you. Please be seated.

STATEMENT OF HARRY SALEM, PH.D., CHIEF SCIENTIST FOR LIFE SCIENCES, U.S. ARMY CHEMICAL BIOLOGICAL DEFENSE COMMAND

Dr. SALEM. Mr. Chairman, I would like to make a correction. My title is I'm the Chief Scientist for Life Sciences at the U.S. Army Chemical Biological Defense Command.

Mr. ZELIFF. I apologize. We had incorrect information here and thank you for pointing that out.

The Chair now yields to the chairman of the full committee, Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman.

And I in turn would like to yield my time to the gentleman from Indiana, Mr. Souder.

Mr. SOUDER. Thank you, Mr. Chairman.

Mr. Jamar, did you know where the children were in the compound as you were inserting the gas?

Mr. JAMAR. We were—our estimate was they were on the second floor. The area that once it started that Mr. Potts alluded to, where were they during the fire fight, one of the reasons that once the—very, very near when the gunfire had stopped, one of the reasons that the HRT members rushed to the bus was the hope that the children were in that bus, that was a safe place. Mr. Rogers can describe that more in detail.

Mr. SOUDER. But they weren't in fact where you thought they were?

Mr. JAMAR. No, sir.

Mr. SOUDER. And also I think it's really important that we don't just kind of—politicians kind of slide and spin, but we can't have that out of the panel. You didn't say that you thought that there was a good likelihood, like Mr. Potts, you said 99 percent certain that they were going to fire on the tank.

Mr. JAMAR. That was my personal opinion. You know, I'm trying to give you the best answers I can give you here. My thought was that—but that's why we—I thought their motivation was they feared entry, so if we changed the plan, we broadened it out where we would take one tank up and firing on that one tank would be—it was just the one tank, we could try to convince them not to fire.

Mr. SOUDER. I understand you were hoping that they wouldn't.

Mr. JAMAR. Yes, sir.

Mr. SOUDER. And you used reasonable restraint in starting, I'm not questioning that, but you assumed you would go to the next level.

Mr. JAMAR. No, I feared we would.

Mr. SOUDER. Ninety-nine percent is pretty certain.

Mr. JAMAR. I'm telling you it was—let me get back to why I was saying that because what I didn't want was all this stuff to go up at once. Excuse me. I'm not saying this very well. Forgive me for taking your time.

What I didn't want was incremental, where we come up with the Bradleys over there, where they face automatic fire over and over again. That's the context of that.

Mr. SOUDER. So when you move to the next step and I understand that you had planned if you saw a blockade or didn't see anybody coming out to knock down the walls, would you have consid-

ered—to make escape routes, in other words I'm not suggesting maliciousness in knocking down the walls, but would that not have been considered an entry and did they consider that an entry which is why they lighted the fire at that point?

Mr. JAMAR. No, I think—they didn't light the fire at noon.

Mr. SOUDER. Wasn't that when the walls came down and they saw——

Mr. JAMAR. No. That was before then. We are telling them all the time: we're not coming in. Come out. Please come out. Don't sit in there. Don't settle it this way. This is 6 hours.

Mr. SOUDER. You discussed the possibility with the Attorney General that it might be perceived as you're knocking down the compound walls as they see the end that they might light the fire at that point, was that discussed?

Mr. JAMAR. I don't think we—specifically fire. The idea was that when we—if they weren't coming out that we had to make holes to provide escape. That's why we did it. If they'd have been coming out, we wouldn't have made the holes in the place, if people had been coming out, so we presumed they couldn't get out.

Mr. SOUDER. I understand it wasn't a malicious attempt to do that. What I'm wondering—because as I read the transcripts with Mr. Sage, he was trying to warn them saying, come out, we're not trying to harm you, and saying as he's doing that and you can hear them say "spread the fuel."

Mr. JAMAR. You couldn't hear that then. We couldn't know that was happening. If we'd had heard "spread the fuel," we'd have stopped right there. We didn't hear. We didn't know that until those tapes were enhanced. We weren't hearing that.

Mr. SOUDER. I wanted to ask Mr. Potts one other question. Did the Attorney General know that just 7 months earlier during the standoff with Randy Weaver, the white separatist in Idaho, that the FBI apparently was warned against using the gas at that point. In the U.S. Marshals Service Log obtained states that "the deployment of gas in the residence presents a high degree of risk to small children. There may be a 1-year-old baby inside."

Was she informed that there already was a warning inside the Government?

Mr. POTTS. That log is not correct. There was—that's an absolutely incorrect statement by the U.S. Marshals Service Log.

The facts of that are that in Idaho there were discussions about what happens—as we do with any crisis situation, when you arrive there, you start trying to set up negotiations, but you also have to start planning for what happens if on an emergency basis we have to resolve this thing tactically.

As a part of those discussions, there was discussion about whether or not CS gas or some other kind of gas can be used there. That never got any further than that. The discussions, when they first started, we asked the questions what would the impact be on the children? While there was some investigation that started into that, some research and some——

Mr. SOUDER. Just to finish that point, is part of the reason it didn't go further is because they decided not to do it?

Mr. POTTS. We decided not to do it and one of the other—that's right. We decided not to use it, but it had nothing to do with infor-

mation that had been gathered that it would be—have any kind of negative effect on the children.

Mr. SOUDER. Thank you.

Mr. ZELIFF. Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

Given all the testimony we've had about sinister devices and things, I was reluctant to sit down here because this instrument was on my desk. But now I see that the name Larry McIntosh is written on it. So if Larry McIntosh is missing some sinister device, I want to make sure it gets returned to him and I'm happy to see that it didn't explode when I contacted it.

Is there somebody named Larry McIntosh looking for some device that looks like this? It's a mind control machine, maybe so. I'll put it back there.

Mr. Chairman, I just have two questions. One is a completely worthless question, but that's probably not unlike many of the questions that have been asked throughout the course of this hearing. One I think may serve some useful purpose in the context of this hearing and the future conduct of events.

But I would submit to the panel that both questions I think in my mind are essentially the same question, and so I want to ask these two questions to you and ask you each to respond. And I won't wait until the end of my 5 minutes to do that.

Mr. ZELIFF. We appreciate that.

Mr. WATT. The first question, the one which I think is a worthless question, is if you had this to do over again, knowing what you know now, what would you do differently?

The second question that I have to ask, which I don't think is a worthless question but may be exactly the same consequence, is informed by the experiences you had at Waco and what resulted following the decisions and actions you took at Waco, what would you do differently in a future situation similar to the situation at Waco?

And if I can get each of you gentlemen in whatever capacity you made decisions or took actions at Waco to answer those questions, if you perceive them to be the same question, fine, I do, but I would like to get each of your responses.

Maybe I'll start at this end—well, actually you were probably more directly involved, so let me start with you in case the chairman wants to abbreviate, we'll have the most directly involved people having gone first.

Mr. Potts.

Mr. POTTS. Those are pretty broad questions. I'll try not to do like I did last time and give quite as long an answer, but it's knowing what we know now, knowing that they were going to light a fire, what would we do differently. If we knew that they were going to light a fire, one of the problems of trying to figure out how we would have done this differently is that we had this emergency plan that if they were going to commit suicide, the plan was to put gas in there to try to get them out and prevent the suicide and to knock holes in the walls so they could come out, those who did not want to participate.

Clearly we would do anything we could to have prevented this mass suicide from occurring. I think that the negotiations, as

Byron Sage said earlier, one of the frustrations about this case is not knowing, not being able to tell everyone who comes behind us. I would love to have left a note on my desk when I left as Assistant Director of CID that says, "If you ever have another Waco, here's how you resolve it."

We did everything we could from a negotiation standpoint and then when it finally got to a certain point where we believed based on all of the information that's coming in from all of the experts—you asked why didn't we wait longer, one of the—one of the reasons is because of all the psychological and behavioral science information we had that indicates that what Koresh really wants at the end of all of this, at the end of the day, whether it's a time that you pick by doing something or whether it's a time that he chooses because he decides now is my time to do it, is that he wants a fight with the authorities. He wants to end this thing that he said, "In 1985, I started planning for a battle with the authorities." And he wants to end it that way.

But when you're confronted with those kinds of situations, I think we'd have to go into each one of these differently and deal with them and try to negotiate them out and find out what the key is going to be. We never were able to find that key because I think the key to Koresh was his ultimate goal was to have this type of an apocalyptic end.

Are there little things we would have done differently? There clearly are. We probably wouldn't have played the music.

There are all kinds of little things like that that we've changed. We've changed a lot of policy issues in the FBI to make things better in response to a crisis.

We've put the negotiators and the hostage rescue team together under one command. We've done much more advanced training, not only of field commanders, but of FBI headquarters executives on how do you respond to these kinds of crises.

We had a HRT team and the negotiators that trained all the time and are the best in the world, but we had not given adequate training to the commanders.

Do I think that made any difference in the way this came out? I absolutely do not. I don't think you could have had a better onsite commander than Jeff Jamar. So there are changes that we've made, but in the situation itself, I don't think there is any easy answer.

Mr. JAMAR. I think one way to answer your question is let's say we heard on one of our overhears that Koresh said, "If they come in, if they approach us in any way, I'm going to set the compound on fire." Let's say we knew that.

Our method would have been to work on the people inside and find a way of communicating with them, which we tried over the loudspeakers. That's when we put the loudspeakers in.

I think the lesser items to that that Mr. Potts just described I agree with, there are other changes we would have made. But if we had to know that, that's the part that when we know he's going to do that—of course, that's why we sent the microphones in with the hope of learning what was in his mind.

The sad part is, though, that in these circumstances is when they hold all the cards, when all events are in his absolute control, each

one has to stand on its own. I don't think you can presume anything about anyone in these circumstances. What you have to do is learn from experience.

I think the FBI and all of law enforcement has learned from what happened to us there. I think the whole country has learned. I think that's why I think these hearings are so worthwhile, that we should be held responsible for what we did and we should answer for what we did.

But the—I think that the changes beyond what we could do to him to change his mind or change those people's minds—in their minds limits us in that way. All you can do is take these and do the best you can with them, each one, and keep your mind open and keep reaching out for all the information you can.

And I can tell you that everyone there put body and soul in just to save those people inside there and there'll be the same attitude wherever we go. We didn't run out of time. We didn't run out of money. We'll continue to work on it as hard as we can on each one of these.

Mr. ROGERS. Congressman, I think it's real clear, at least it is to us, that had our crystal ball been working that day, there would not have been an insertion of tear gas into that compound knowing that a fire was going to ensue. That's the answer to your first question. We would not have done it.

The answer to the second question is a little bit tougher. What we do in the future, I assume if we had the same set of circumstances. You know the problem in law enforcement is that every decision has consequences. Every decision this committee will make concerning law enforcement will have consequences.

If we decide, for example, that we're not going to allow CS tear gas to be used anymore into a compound, the consequences are going to be for law enforcement that you just have taken away a nonlethal tool that they have used in order to resolve hundreds if not thousands of barricaded situations. So I just offer that as an example of consequences of every decision we make.

I don't have an answer really for the second part of the question about what we would do in the future, but we clearly will take all of the lessons learned here, and many of the things that Mr. Jamar and Mr. Potts have alluded to, changes have already been made and we're trying to make it better.

Mr. SAGE. Congressman Watt, from a negotiation standpoint, this is not, and it's been said before, it's not an exact science. No one has all the answers. There's no guarantees, but you enter into it. It's a very challenging course to attempt to pursue as a negotiator. This was by far the most challenging situation I'd ever been faced with in my 25 years in law enforcement.

I'm extremely proud of the makeup of the team, of the efforts that went into it by every single negotiator and those that supported the negotiation team from a clerical standpoint all the way up to coordinators.

I'm also devastated by the loss of life. I think everybody that participated in this thing and put such a one-on-one effort into contacting those people, over 68 people contacted, some extensively, will forever have an effect on all of us. But we employed some of the most innovative techniques I've ever seen brought to bear

against a situation. I almost said a situation like this. There's never been a situation like this and God forbid there ever will be again.

But by experience, the second question that you have, I would say a lot of steps have been made by the Bureau internally to address that very issue. We need to learn from each and every situation we have.

We've had critiques. We've explored every possible—everything that worked, as well as everything that didn't work. Sometimes you don't get as much emphasis on those things that did work.

We saved the lives of 35 people during the course of this thing, 9 additional people that came out on the last day, and then the 2 individuals that came in and out. That's a total of 46 people. That's lost on the public sometimes. I'm proud of that from a negotiation standpoint.

The most significant thing I think in hindsight is probably the coordination between all elements. There is an aggressive effort undertaken now under the critical incident response group headed up at Quantico to ensure that that's done at very highest level of exchange and professionalism and that will help. But all of these things hopefully will make us a little more prepared for the next one, because, unfortunately, there may very well be a next one.

Mr. BETZ. Congressman, in my role of seeking expert advice on CS, I would still go to Edgewood, MD, and ask for the best person available in that. It is the center for that. The only difference would be is that I would probably ask for Dr. Harry Salem now, which I could not do then because I was not familiar with him, based on my experience now of his dedication to research and finding facts based on hard scientific data.

Dr. SALEM. Congressman Watt, I was asked to advise on the safety and toxicology of CS. The advice I gave was that if a chemical had to be used, the riot control agent CS would be the agent of choice. It is considered the safest and most potent riot control agent that we are aware of based on the scientific literature.

As a practicing toxicologist, I spent the last 40 years working to save lives and to improve the quality of life for the human race. Personally, I was deeply moved and devastated by the tragedy that occurred at Waco and for the regrettable loss of life that occurred there. My meeting with the leaders of the people who was involved with this and the decisionmakers, I was convinced that they were motivated by the same motivation that I had was to save lives.

And if I had to make that decision again based on the scientific literature, the safest and most potent riot control agent that we know of is CS.

Mr. WATT. Thank you, Mr. Chairman.

Mr. ZELIFF. I would again like to just remind members, the last two members took 35 minutes and there is no discussion or criticism of the content of the questions, they were good questions and certainly good answers. I just want to try to appeal to everybody's common sense here.

We do have a 5-minute rule. And before our side gets carried away with trying to get even on this thing and we lose control of this, I would just like to keep and ask for everybody's cooperation.

Thank you very much.

Mr. CONYERS. Mr. Chairman, you're doing an excellent job.

Mr. ZELIFF. Thank you, Mr. Conyers. I appreciate that.

Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Potts, not to get us off on a tangent, but your answer to Congressman Souder's question intrigued me with regard to the—I think you said the Ruby Ridge crisis log was inaccurate when it states, "The deployment of gas into the residence presents a high degree of risk to small children."

Mr. POTTS. What I'm saying is I think there's more to that sentence which says the reason that it wasn't done, that there was a decision not to use CS gas at Ruby Ridge was because of the high risk that it poses to young children.

Mr. BARR. I quoted you the whole sentence.

Mr. POTTS. OK. And that's—we never reached that conclusion because we never got to a final decision as to whether to use it or not. We asked the question during the course of it what kind of effect will this have on the children and that was being researched, but we never got to the point of where all of that information came in. We certainly never got enough information in from my standpoint or probably from anyone else's associated with that standoff to use the gas at that time.

Mr. BARR. So you're not stating that this sentence is—somebody inserted it in there improperly or made it up or anything?

Mr. POTTS. No, sir, I'm just simply saying it doesn't accurately reflect the information that we had and the information upon which we based the decision not to use it.

Mr. BARR. You're not saying that the deployment of gas into a residence doesn't present a high degree of risk to small children?

Mr. POTTS. What I'm saying—I would defer to our expert on that. We did not believe even in Waco that it was a high risk to children.

Mr. BARR. Well, OK. You haven't clarified it.

Mr. POTTS. Sorry. I tried.

Mr. BARR. Pardon?

Mr. POTTS. I'm sorry. I was trying to clarify it. I apparently wasn't.

Mr. BARR. You may have been, but you didn't.

Mr. Potts, you also said, I believe, that Mr. Jamar submitted a gas plan to you around the 22d of March; is that correct?

Mr. POTTS. No, sir. 27th.

Mr. BARR. The 22d. That's what I said the 22d. Two-two.

Mr. POTTS. The 27th, two-seven.

Mr. BARR. Oh, the 27th, two-seven. OK. And then there was discussion of the plan for the next couple of weeks.

Mr. POTTS. Yes, sir.

Mr. BARR. OK. And then on the 8th and 9th, you and Mr. Clarke went to Waco and discussed it further in Waco, among other things that you did there?

Mr. POTTS. Actually, we went the 7th and 8th, but there was—there was a tremendous amount of discussion just at Waco and at headquarters about the plan itself. When I first heard about the plan, I was very much opposed to it. Mr. Jamar and I had several conversations on the phone.

I believe that after one particular conference call that we had where we discussed whether we were at the point where we should move to this next step or not, both of us were a little frustrated that the information that we had may not—may not be meshing right.

And so when I got home that night around 11, Mr. Jamar called me at home and we had another lengthy discussion about whether or not this was the right thing to do at this time or not. When he did that, he suggested—he said I think what really needs to occur here for you to have the full impact of what's going on at Waco is that you and Floyd Clarke or someone——

Mr. BARR. I'm not really—I don't know why you—I didn't ask you about why you went there. I said you did go there and you discussed the CS plans further.

Mr. POTTS. That's right.

Mr. BARR. Was the first briefing of Attorney General on the 9th?

Mr. POTTS. No, sir, it wasn't on the 9th. We briefed the Director, Director Sessions at that time, and Doug Gow on the 9th and then Director Sessions, after considering it, and after questions and being briefed himself then set up an appointment with the Attorney General for Monday the 12th.

Mr. BARR. There was no briefing of the Attorney General about it on the 9th.

Mr. POTTS. Not by the FBI, no, sir.

Mr. BARR. By somebody else?

Mr. POTTS. I don't know. I believe that there were people in Waco on the 7th and 8th from the ATF that may have——

Mr. BARR. I'm just reading from this report. Is this one inaccurate?

Mr. POTTS. No, I don't believe it is. I believe that it says that on the 9th that probably Mark Richard informed people at the Department of Justice that there were discussions within the FBI about a gas insertion plan and then Director Sessions, having been briefed on the 9th, called the Attorney General and asked for a briefing time on the 12th and that's when that occurred.

Mr. BARR. OK. So when it states in here that, quote, "On April 9, Richard and Reynolds briefed the Attorney General on the results of their trip to Waco," that didn't concern the CS gas?

Mr. POTTS. It didn't necessarily concern the CS gas. They may have mentioned to her, I don't know, that we——

Mr. ZELIFF. The gentleman's time is expired.

Mr. BARR. This follows a footnote. I quoted you from page 259, and this follows after a footnote on page 258, quote, "Potts pointed out that the plan was really just an extension of the emergency assault plan which had been in effect since the beginning of the standoff."

Was that the context in which initially the CS plan was presented to the Attorney General?

Mr. POTTS. No, sir, not at all. What I was talking about is the specifics of the plan itself was certainly an extension of our original emergency response plan.

Mr. ZELIFF. The gentleman's time is expired.

Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

Dr. Salem, if you could answer very promptly because of the time constraints, yesterday I asked really what some of my constituents had asked, is whether there is a gas available that is safe but would render people unconscious, rather than a reaction. And if not, is there work underway to develop such a substance? And if it's not classified information, can you answer whether that is being pursued or whether there's anything available?

Dr. SALEM. The only type of things that are available to do that would be the anesthetic gases, and the anesthetic gases are used in hospital situations so that if there is a respiratory depression or any cardiovascular effect it can be treated.

Ms. LOFGREN. So it couldn't be used unless you had that kind of equipment?

Dr. SALEM. No, ma'am. Concentration has a tighter control.

Ms. LOFGREN. Thank you very much.

I have a letter, it's in the packet that all the members have, dated March 28 from Kiri Jewell's father. I'm wondering if Mr. Potts, Mr. Jamar, Mr. Rogers could answer some questions about it. It's to the President of the United States. And I'll read just a few phrases, not the whole letter, because it's so long.

He says, "1 year to the day before the Bureau of Alcohol, Tobacco and Firearms attempted to serve warrants, I won custody of my daughter Kiri from her mother, Sherri Jewell, who was then a member of the cult and is now among those within the compound. Females, including children as young as 12, were known to be taken by Howell Koresh as his wives. He would impregnate them as soon as possible with his holy seed, girls as young as 13 having given birth to his children.

"My own daughter told the authorities in Waco on February 22 of this year of how he had sexually assaulted her when she was 10. Kiri's mother participated in the assault by delivering Kiri to him in a hotel room, having full knowledge of his intent. Kiri recently described to me how she was taught by Koresh and other followers to commit suicide. When I asked her why this was taught, she said that Koresh preached that they had to be martyred to gain salvation.

"The plan was to instigate an assault by the authorities in which they would be killed. But if the Feds could not be baited, Koresh and his followers would commit suicide.

"Mr. President, I feel that Koresh has placed you and the agents under your command in what amounts to a no-win situation. He has planned this for years, and he knows full well that, politically, there is no right move for authorities to make against him. If they attack, people on both sides will die, and the authorities will be blamed. If authorities continue to stand back and wait, the public will grow weary and come to think of the Federal forces as ineffectual. Stand back too long, and the Davidians will simply resort to plan B, suicide, and then the authorities will be blamed for not stepping in.

"Kiri and I have had several long talks about how this crisis affects her, and we discussed her concerns for her mother. She understands that it is likely that another assault would result in the deaths of many of her friends in the compound. Her response, 'Daddy, it's better that some of them die than all of them.'

"Koresh and his followers are using America's values to hold us all hostage. Those who are inside are there by choice. America did not create the situation. It was designed by a pedophile with a Bible in one hand and a gun in the other. Please, Mr. President, end it now."

My question—I'm sure the President didn't get this. I mean, he gets millions of letters a year. But my question to the three of you is whether you had received—this letter had been booted down to you in any way? Whether this information, if you had it, made a difference in your thinking, whether it matched your own, whether you saw the CS gas attack as sort of an in-between spot of where Kiri Jewell's dad was.

And since we're looking for improvements for the future, whether information such as this from a former cult member or someone who was in communication with people in the complex would have been helpful. Is there something we need to do to establish different information flow in the future?

Thank you.

Mr. POTTS. I don't remember seeing that letter, but I can—I can tell you that I think that it was a fairly accurate assessment of where we felt we were in terms of it being an exceptionally difficult situation to resolve, that he was not going to come out voluntarily.

We were told by Park Dietz, a psychiatrist, on March 5, that this standoff—Koresh has everything he needs inside that compound. All his basic goals and needs are being met inside the compound. There was always a concern that he would do something to lure us inside. So that's the kind of——

Ms. LOFGREN. Is—if you could just answer whether it would make a difference, and I don't want to abuse my time so Mr. Jamar and Rogers can answer.

Mr. POTTS. Well, we did do that. We went out and contacted everyone who had been inside that cult that we could, to try to locate them and see what their perception was going to be of what would occur inside. So that information is certainly valuable, and we tried to collect it.

Mr. ZELIFF. Time is expired.

Ms. LOFGREN. Could we just get real quick answers?

Mr. ZELIFF. I'll tell you what. Let me just answer this. You got one. And by agreement with the minority, Mr. Schumer and I are going to limit this little game—I don't mean to call it a game, but two people. In other words, pick any two and you get a response once the red light hits. We both agree that that's a fair process to move it along. So you pick one more person for another response.

Ms. LOFGREN. Mr. Jamar.

Mr. JAMAR. We did a very indepth research on the possibilities of suicide. I don't know when that letter was received at the White House, but if it was received in time, we would have received it. I'd be surprised if we did not. I don't remember it specifically, but I'd be very surprised if it was not promptly sent to us. All that was part of the process.

As Mr. Potts said, I think his perceptions were very, very, very, very accurate. But he would have been interviewed probably or his daughter might have been interviewed as part of that suicide review. So we would have had that information.

And we were in a position to review all the letters. We got some crazy letters, we got some well intended thoughtful letters, too, and they were all reviewed from all sorts of sources. We had people looking at it as best we could. And that answers it, I think.

Ms. LOFGREN. Thank you.

Thank you, Mr. Chairman.

Mr. ZELIFF. Thank you very much.

Mr. Ehrlich.

Mr. EHRLICH. Thank you, Mr. Chairman.

I'm going to yield to Mr. Barr. Before I do, I want to yet again revisit my sense of frustration with respect to the political environment surrounding these—surrounding these hearings. This is really a good panel to do it with.

Because I want to congratulate the panel. And I just want you all to know, Mr. Jamar particularly, your comments, what you all have told us so far today really goes to the bottom line of the hearings. We want to know what you all think went wrong, new policies and procedures that you have instituted to correct what went wrong at Waco. And I, for one, I think everyone—I speak for everyone on both sides of the aisle—appreciates that. That's the purpose of these hearings.

Because the political environment is such that the other day we had a member on the other side of the aisle characterize a Republican depiction of Mr. Koresh as a child molester—I kept a list here—child molester, pedophile, pervert, evil, con artist, liar, snake, arms trafficker and real bad guy, as an attempt at rehabilitation. And I opened the paper today and I see a writer from the Post has now labeled this same depiction of Mr. Koresh as a Republican attempt at posthumous—or a posthumous attempt to act as Mr. Koresh's protector.

That's a frustration that we all feel with respect to the political environment surrounding these hearings. I know you all appreciate that. Most of us here want to get to the bottom line with respect to the real issues surrounding Waco.

And with that comment, I'll yield to Mr. Barr.

Mr. BARR. Thank you.

I have a question for Mr. Sage, but while I'm doing that, Mr. Potts, if you would, please, take a look at page 101 of the report of the Deputy Attorney General, and that indicates even clearer than the previous citation that I made to you that there were discussions with the Attorney General on April 9 concerning, specifically, the CS plan.

Mr. Sage, am I—and, again, I just want to clarify something. The page that we——

Mr. POTTS. Sir——

Mr. BARR [continuing]. That we have here concerning the language that was given over the loudspeaker during the course of the time when the CS was being inserted, it says, among other things, this is not an assault. And I believe that that was being spoken over a loudspeaker so it could be heard inside. Was that occurring simultaneously with the armored vehicle going up to the building?

Mr. SAGE. The initial—the initial broadcast was as the armored vehicle was—the CEV was just turning on to the driveway, as I understand. It was far from the building.

Mr. BARR. Right. But am I—I think that they stated that this was broadcast over and over again.

Mr. SAGE. That is correct. That's why I said the initial broadcast was well before the vehicle was——

Mr. BARR. I'm not asking about the initial broadcast. I was wondering if this language, including this is not an assault, was being broadcast over the loudspeaker during the course of the time when the vehicle was going up to the building and the gas was being inserted.

Mr. SAGE. This is not an assault. We are not entering your building. And it was repeated several times.

Mr. BARR. OK. While the vehicle was going up to the building?

Mr. SAGE. Yes, sir, and throughout the morning for 6 hours.

Mr. BARR. OK. Mr. Jamar, did you—I think there was some discussion earlier about what the electronic surveillance could pick up during—until the capability went blank.

Mr. JAMAR. On the 19th?

Mr. BARR. On the 19th. I recall that Mr. Ray Jahn, who was the lead prosecutor for the Department of Justice in this case, told the committee that he could hear the language we talked about earlier, about the fires and the fuel and so forth, the first time he heard it without any sort of enhancement.

Mr. JAMAR. The first time he heard the tape?

Mr. BARR. Yes.

Mr. JAMAR. I think the explanation that I received was that the—when we were listening, there's a difference between listening to a tape and listening to a live broadcast. The tape may pick up something that the ear cannot. It can record it. I think that was the problem. What we were losing was from—it was being transmitted by radio to a point on telephone lines back to the monitors for safety reasons. The monitors were not forward. Am I clear on that? The radio——

Mr. BARR. Yes, I understand how the transmission itself works. What I don't understand, because I've listened myself to a number of undercover operations, and while I certainly understand that there may be a lot going around outside a person who's listening, certainly sitting in a command post listening, in my experience you're generally able to pick up pretty much as much as you can off of the unenhanced tape.

Mr. JAMAR. I can tell you the monitors didn't hear it. The people monitoring did not hear it.

I'm trying to find a plausible explanation. I've been searching this forever. I would love to have known that that was going on. And the only thing I've been told—I'm not a technician by any stretch of the imagination—is that that could have been the problem. I'm not saying it was. But the monitors did not hear that. We didn't know that until we heard the tapes and—some of which had been enhanced.

Mr. BARR. OK. So that may be one problem area.

Mr. JAMAR. Certainly a problem area.

Mr. POTTS. Could I just clarify? I'm sorry, could I just clarify the comment on page 101 that Mr. Barr——

Mr. ZELIFF. Sure.

Mr. POTTS. Mr. Barr, what that is, is information that was coming from Waco. This would have been taken from logs and information that—at the site. And what the site is saying is that they were contacting us, discussions began at FBI headquarters and with the Attorney General to determine if the plan would be approved.

I believe from the FBI standpoint the only contact that we had with the Attorney General on the 9th would have been Director Sessions' phone call to her to say that we want to brief you on the 12th regarding the plan. I think that's consistent with that.

Mr. ZELIFF. OK. Thank you.

Ms. SLAUGHTER. Mr. Chairman.

Mr. ZELIFF. Does the minority want to—Ms. Slaughter from New York.

Ms. SLAUGHTER. Thank you, Mr. Chairman.

Dr. Salem, I don't know if you're the correct person to ask about this, but I don't know that we're going to have the correct person, either. We heard last night from a psychologist on CS gas, some chemists, but my understanding, Dr. Salem, is that autopsy showed that every child that died, died of asphyxiation from the fire. Is that your understanding?

Dr. SALEM. I have not seen the autopsy reports.

Ms. SLAUGHTER. Are you aware of any person—have you ever seen or heard of any person who has died from CS gas exposure?

Dr. SALEM. No, ma'am. Most of the—all of the published literature that I have seen, they all say that there are no authenticated cases where anyone has died following CS exposure. I know there have been a lot of allegations and a lot of conjecture on that point, but the literature—there are—does not reveal any authenticated cases.

Ms. SLAUGHTER. I'm hoping that the persons who call witnesses here—and I don't have any idea who they're going to be—will bring in someone who can tell us about the autopsies on—Mr. Sage, do you have any information on that?

Mr. SAGE. Yes, ma'am. After the 19th of April, being the supervisor in charge of the Austin/Waco offices, I also assisted in the coordination of the FBI resources, crime scene, and part of that was the accumulation of information to be reported to headquarters from the medical examiner's office in Tarrant County, Dr. Peerwani. I don't have a definitive bottom line. I wish I did, as far as exact numbers of identified victims and so forth. But we did have reports——

Ms. SLAUGHTER. As I understand it from some things I read, you identified almost every victim. Is that correct?

Mr. SAGE. Yes, ma'am. Yes, ma'am. But there's—we still—numbers are still approximate. We're trying to give this panel and the American public absolutes, and we just don't have a bottom line yet from the medical examiner's office.

But children perished from gunshot wounds, at least four of them; one from a stab wound and two from blunt trauma that may well have been part of that bunker-like building collapsing on them. But none, according to the reports that we received at the command post and forwarded that information to headquarters, died from any effect of the CS gas. I do not profess to be an expert

in the field, but I'm telling you what the reports were that came to me at the command post in Waco.

Ms. SLAUGHTER. It would seem those should be available for us. I certainly would like to see them.

Mr. Rogers, I wanted to give you an opportunity to talk this morning, too. You were on the scene.

Mr. ROGERS. Yes, ma'am, I was.

Ms. SLAUGHTER. And as I see from the brief notes that I have here, it says that you went to an underground tank. I'm not exactly clear on what that is. Is that the—is that the buried bus——

Mr. ROGERS. Yes, ma'am.

Ms. SLAUGHTER [continuing]. That is being referred to there? What did you find there?

Mr. ROGERS. When we went into the buried bus, what we anticipated and hoped we'd find would be the children, where they had placed them for safety during this. We went—I don't believe we have a photo up there right now. But——

Ms. SLAUGHTER. I'd like to see one, if we could—reserving my time, Mr. Chairman, until we put the photo up.

Mr. ROGERS. We have a photo of the compound. They had placed a school bus underground and covered it with dirt.

And in the—in that particular photograph, it's in—would you point it out for me? It's in the lower part of the photograph, as you look at it. They had a partial building foundation being constructed, and there was a tunnel that they also constructed from the partial foundation that went into the front door of the bus. Again, all this is underground. And then the bus went right up to—a portion of it was actually underneath the edge of the compound building, and they had built a trapdoor in the floor, in the hallway, at the end of the hallway, that went down into the rear of the bus. So it was a contiguous structure, once they had completed their construction.

And as soon as the fire department arrived, I directed them to start putting water into the area where the bus was, in the hopes that we could cool it down. About 17 agents of the hostage rescue team then entered that about waste deep water in the foundation——

Ms. SLAUGHTER. This is water from the fire department?

Mr. ROGERS. No, ma'am, this is water from rain in Waco and just settlement water that accumulated there.

Mr. ZELIFF. Time is expired.

Ms. SLAUGHTER. Could I have just a second more? Because they took time to put the photo up.

Mr. ZELIFF. A quick second.

Ms. SLAUGHTER. Thank you, Mr. Zeliff.

Mr. ROGERS. Anyway, they went in through that water filled with human excrement that they had dumped in there—there were actually bodies in there that they had placed, there were rats—went through this tunnel and then broke into the bus and found that there were no children. There was no one in there. But the air was cool. It was fresh. There was no gas. There was no smoke from the fire. And—but they had not chosen to place their children in there.

Ms. SLAUGHTER. Thank you, Mr. Rogers.

Mr. ZELIFF. OK. Thank you.

Mr. Potts, you were a key decisionmaker at Ruby Ridge as well as at Waco; is that correct?

Mr. POTTS. Yes, sir.

Mr. ZELIFF. And Mr. Jamar would call you for approvals? I mean, were you basically——

Mr. POTTS. At Waco, yes, sir.

Mr. ZELIFF. And as—on the issue of the CS gas at Ruby Ridge, was that considered at one point there and then abandoned? And if so, why?

Mr. POTTS. It was one of many options that were being discussed. Should there have to be some kind of a tactical resolution? It was—it was never—it was never necessary to make a yes-or-no decision. We did not necessarily decide against it, but we did not decide to go forward with any gas. And there would have had to have been a lot more discussion and review of facts before we would have made such a decision.

Mr. ZELIFF. When the reference on this U.S. Marshals Service Log was indicated, you discredited that?

Mr. POTTS. I discredit it as being that's not correct that we made a decision not to use it because of harm to children. And I'd also like to point out that at Ruby Ridge I have some information that there was—there were other types of gases that were being discussed that the marshals had, and I—that was not CS gas.

Mr. ZELIFF. Is this—this says——

Mr. POTTS. It may be referring to that.

Mr. ZELIFF [continuing]. Concern was raised about the deployment of gas into the residence because of the high degree of risk to small children and the possibility that a 1-year-old baby was inside. But you're saying that's not correct?

Mr. POTTS. What I'm saying is we never made a decision. We discussed whether or not it would be harmful or not to the children and had started to research that. There was no conclusion, and there was no final decision about——

Mr. ZELIFF. Wouldn't that be just a—I mean, wouldn't that be kind of a—it may not have been a red light, but at least a yellow light, a major area of concern, if something like that was discussed openly and even though some may try to discredit, but wouldn't that be a good reason to be very cautious in the use of CS gas at Waco, just from what you learned?

Mr. POTTS. That's why—yes, sir. That's why we looked—we didn't learn anything from Ruby Ridge in terms of gas, the effects of gas.

Mr. ZELIFF. Just the information that you had out there as you were making decisions?

Mr. POTTS. We didn't have any information out there that indicated that CS gas was harmful to children.

Mr. ZELIFF. So how did they get this information?

Mr. POTTS. I don't know, sir.

Mr. ZELIFF. OK. Did Mr. Hubbell ever tell you that either he or the President wanted to approve any shift away from the negotiation plan?

Mr. POTTS. Not Mr. Hubbell, no, sir. Stuart Gerson told me very early in the operation—he actually told the Director, Director Ses-

sions, who informed me, and then I told Jeff Jamar, that the President had adopted—that we were going forward the correct way with negotiation, and he wanted to be advised if there was any change.

Mr. ZELIFF. Any change, and so he was in agreement with the philosophy of negotiating. If that was to change, he wanted to know and be involved?

Mr. POTTS. That's my understanding of what Mr. Gerson told the Director Sessions.

Mr. ZELIFF. So tell me about your relationship with Mr. Jamar. How much time every day would you be in contact?

Mr. POTTS. We would talk several times a day, sometimes at length.

Mr. ZELIFF. Were you ever involved in the information that we received relative to the coming out plan that the two attorneys talked about the other day?

Mr. POTTS. There were discussions early in April about a coming out plan, just like there were in early March. That's separate from the discussions about preparing the manuscript on the seven seals, which started on April 14.

Mr. ZELIFF. Right. But the one on the 14th, the two attorneys that talked about that the other day, gave us testimony—Mr. Jamar indicated that he didn't think that they were serious. They felt that it was very serious. The next day, I believe, Mr. Sage talked to Mr. Hubbell for 2 hours. And I think you indicated—I'll let you answer that directly—that you did not—did you talk to Mr. Hubbell about that plan?

Mr. SAGE. Yes, sir, I did.

Mr. ZELIFF. You did. So between you and Mr. Hubbell, Mr. Potts, all three of you decided to move forward in spite of that plan?

Mr. SAGE. I think it's an overstatement that I decided to. I wasn't in a position to make any command decisions in this and was not brought into that conversation for that purpose.

Mr. ZELIFF. Who made that decision?

Mr. SAGE. Sir, all I know is I was asked to give a candid, straightforward assessment of negotiations, and that's what I did.

Mr. ZELIFF. Mr. Potts, did you make that decision?

Mr. POTTS. Certainly the recommendation that we had from Waco, in my discussions with Jeff Jamar, were that this is not a serious effort on the part of Koresh based on contacts with Judy Schneider and Steve Schneider, who verified that they hadn't even received the first page of any—of the first seal to edit. So all of that was certainly considered.

One thing we did say, Mr. Chairman—Jeff Jamar said it, I said it, the Attorney General said it, Floyd Clarke, everyone else—if there's any change in the hope that this thing can be resolved differently up to the last minute, then we need to know.

Mr. ZELIFF. The question that I had, in all due respect, are you the one that made that decision or did you pass it on to the Attorney General, the President, Mr. Hubbell or anybody else? Or did you just decide, no, we're not going to pass that on?

Mr. POTTS. Oh, no, sir, I——

Mr. ZELIFF. Did you make the decision?

Mr. POTTS. Mr. Jamar made a decision on the scene. I made a decision based on his recommendation. I passed it along to my boss, who passed it along to Director Sessions, who I assume——

Mr. ZELIFF. Passed it on to the White House?

Mr. POTTS. I don't have any information that Director Sessions had any contact with the White House, no, sir.

Mr. ZELIFF. You did pass it on to the Attorney General?

Mr. POTTS. Yes.

Mr. ZELIFF. OK. Thank you very much.

I'm going to pass on the left, to the right, Mr. Coble from North Carolina.

Mr. COBLE. I thank the gentleman.

The gentleman from Maryland earlier referred to this Washington Post article implying that someone is attempting to protect Koresh. Folks, I think that is unfortunate indeed. No one, so far as I know, on this panel at any time is protecting or defending David Koresh, and I am getting tired of having to repeat that. Folks in my district who are viewing these hearings don't read it that way. People in America I don't think see anything in this hearing as coming down on the side of Koresh. So let me set that aside for the moment.

Let me revisit last night just a minute, Mr. Chairman, because I have a quirk with this sort of thing. This is my third hearing, so it may have been mentioned earlier.

But we had two witnesses from Great Britain last night, and the implication was that the Justice Department got them here and paid their way. Well, folks, the Justice Department didn't pay their way. The taxpayers paid their way. In this town, the implication is, oh, wait, that's just congressional money or this is FBI money or this is Justice. That's taxpayers' money. Just a little quirk that I wanted to make clear for the record.

The other day when Mr. Zimmermann told us about the plan of surrender—and, folks, I'll admit this is subject to interpretation—Mr. Zimmermann felt that plan of surrender was about to come to fruition. Others, I'm sure, think that it was nowhere near fruition.

But when he told that story, gentlemen, I had a pain in my stomach. Now I'm not a delicate, fragile sort. I'm not implying that I'm Mr. Macho, but my point is I'm not overly emotional and overly sensitive. I don't normally feel pain when I hear a story. But when I heard that story, I could visualize all the death—the death being avoided, all the suffering being avoided. Come out and surrender, and let's get on with it.

Having said all that, Mr. Sage, I want us to revisit the April 15 telephone conversation you had with Mr. Hubbell. I think this is a crucial time, and I think that conversation elapsed into about 2 hours, if I'm not mistaken. During that time, Mr. Sage, do you remember whether or not you ever used the word surrender?

Or—I'm paraphrasing now, but, Mr. Hubbell, there's a plan in motion out here Mr. Zimmermann's talking about. Even the Texas Rangers the other day were familiar with the plan. So, obviously, folks knew about the plan. Was that ever communicated, Mr. Sage, to Mr. Hubbell?

Mr. SAGE. Absolutely. The answer is absolutely. We discussed the concept of surrender in finite detail, including the same feel-

ings that you have expressed here were felt by me, were felt by all of us, when the promises to come out on the 2d of March did not come to pass. That same type of intent, desire, commitment and prayer is I'm sure what the defense counsel was feeling and as expressed to this council in good faith. We did express that.

We expressed also the consistency of the pattern of broken promises. No one was attempting to paint this in a particular fashion to facilitate a certain end, such as a tactical resolution.

What I portrayed to him was a—during the course of that conversation and to the other parties that participated on the Washington, DC, end of the conversation—was that it was a consensus, and I need to stress this, of the negotiation team. This was not the singular—my singular idea, which was in contrast to the rest of the negotiators that had been there off and on the entire period of time, which at that time was in the, I think, close to 40-some-odd days. The—what I expressed to him was a factual chronology of exactly what efforts had gone forward, what successes we had received, including at that time 35 people that had come out.

But I also had to stress, in all fairness to him and to you and to the American public, that at the time of that conversation it had been 27 days since we had received anyone out. And maybe even more importantly, it had been 41 days since we had received any children. That's as of the 15th of April.

But, yes, sir, the surrender plan was—it was discussed in detail because it had not changed. And that's a very important part. It had not changed substantially since the understanding that we had with Mr. Koresh allegedly on the 2d of March. The only change that had been inserted was to facilitate the ability to use defense counsel.

Mr. COBLE. Mr. Sage, the chairman is going to come after you and me both if we don't terminate because the light illuminates. Thank you, Mr. Sage.

Thank you, Mr. Chairman.

Mr. ZELIFF. Thank you, Mr. Coble.

Mr. Brewster.

Mr. BREWSTER. Thank you, Mr. Chairman.

I guess—Mr. Potts, were you the one that devised the plan on the intermittent use of gas and execution of the——

Mr. POTTS. No, sir. I——

Mr. BREWSTER. Who did that?

Mr. POTTS. I certainly participated in those discussions. It was actually a team of people who devised that—all of the SAC's, Dick Rogers, Floyd Clarke. It was everyone sitting down, trying to figure out how we could do it and cause the less likely violent response from inside.

Mr. BREWSTER. OK. Did the same team then decide that if the tanks received fire that you would immediately put major quantities of canisters of gas in there?

Mr. POTTS. It was a recommendation that in lieu of returning fire that—that we would recommend that the plan indicate that if we received fire that we should put gas throughout the compound in order to suppress the fire we were receiving.

Mr. BREWSTER. And you obviously had to expect fire, because the people had showed the propensity to do that in the initial raid. So——

Mr. POTTS. Actually, we—we thought that it was a possibility, but we believed by the incremental aspect of putting the gas into the compound and also coupled with the fact that we had made an announcement in advance that we may not, in fact, get fire.

Mr. BREWSTER. OK. And the only one I saw in the bios here that was present to talk with the Attorney General is Dr. Salem at the time the CS gas was discussed. Were you the—or anybody else on the panel involved in that? My understanding is that the Attorney General had great concern for the children, as far as using the CS gas. Was she made aware that if you received fire in the intermittent use of the gas that you would escalate it dramatically? Was she aware of that when she approved the deal?

Mr. ROGERS. Sir, maybe I can answer that. To my knowledge, I briefed her on the entire and full plan that we had at Waco.

Mr. BREWSTER. Did you specifically make her aware that if you received fire, gunfire——

Mr. ROGERS. Yes, sir. The answer is yes.

Mr. BREWSTER. The answer is yes, that if you received gunfire you would escalate the use of the CS gas. OK.

And, Mr. Potts, I notice you've been in several positions of authority there, finally promoted to as high as Deputy Director and then recently removed from that position. What—what has caused that?

Mr. POTTS. Yes, sir. When I was appointed to the acting position in January of this year, I think the Director understood and I understood that it could be a controversial situation because of Waco and Ruby Ridge. And I informed the Director on that day and I informed him every week thereafter that if at any point this hurt the FBI or hurt him that I didn't want to be in such a position.

I'm very proud of being a special agent of the FBI, and I'll serve any position that I'm asked to serve. I think it came to that point where it was not being helpful to the FBI for me to be in that slot, and the Director and I discussed that and that's what caused it.

Mr. BREWSTER. What is your position now?

Mr. POTTS. I'm assigned to the Quantico Training Academy.

Mr. BREWSTER. OK. But you do feel you've been fairly treated?

Mr. POTTS. Yes, sir.

Mr. BREWSTER. OK. Can anyone tell me that what changes have been made in FBI procedure or whatever that might prevent the culmination of an operation like Waco in the future? Has there been any changes?

Mr. POTTS. You want to do it?

We've made a lot of changes, sir, in terms of policy and how we handle these things. We—the first thing we did was we combined the rescue—Hostage Rescue Team and the negotiating element under one command. And they train together, and we think that's going to have a significant impact on these—in terms of their coordination and communication.

The other thing we did is we selected FBI HQ executives, and we selected field executives, and we have given them extensive training on hostage and barricade situations.

Mr. BREWSTER. If we could get something to us in writing, those changes, I would appreciate it.

[Information is in the subcommittees' files.]

Mr. BREWSTER. One quick question. Looking at it, it's obvious to me that, at least for adults, the CS gas could not have been a problem as far as getting out of the building. When the fire started, in your opinion why did the Davidians not come out? Were there barricades across the doors? Had walls fallen in? What—I know a human—any of us can think about, yeah, we'll stay in a building and burn up. I don't think many people would do it, and I don't understand why they didn't come out.

Mr. JAMAR. I think it was a combination. I think some were probably convinced had they left that compound, that their salvation would be in the balance. They were convinced. That's why they were there. That's why they stayed the whole time with him. That's why they didn't come out during the 51-day siege, that they would believe that their salvation rested with David Koresh.

I can't imagine a human being not fleeing gas or fire. But salvation, OK, maybe shot to prevent it and prevented from leaving, the combination of those—those two, I think, probably were 90 percent of them.

Some people got out. Some people got out and didn't bring anybody else with them. Which again tells me that there was control on who could come out and who couldn't. And that person was David Koresh. That's who controlled. And I believe that the highest percentage of those people were—they stayed in there because they thought their eternal salvation rested on that decision.

Mr. BREWSTER. Anyone else have a different idea?

Thank you.

Mr. ZELIFF. Thank you.

The Chair now recognizes Mr. Henry Hyde, the chairman of the full Committee on the Judiciary. Mr. Hyde.

Mr. HYDE. Thank you, Mr. Zeliff.

I want to preface my remarks by trying to identify myself with Mr. Ehrlich, who has talked about not taking sides. We have been portrayed as antilaw enforcement, and I just want to say I've spent my legislative career supporting law enforcement. I think what you people had to do was one of the most difficult assignments imaginable. You're underpaid, you're overworked, and 51 days out in the plains of Texas, confronting a situation requiring you to be at the ready constantly, is a very debilitating adventure.

And I have nothing but the highest praise for law enforcement generically, but that doesn't mean we can't learn from mistakes, errors in judgment, absences of prudent utility, and I think that's our duty.

Because, frankly, I am bewildered in the wake of Jonestown why more time wasn't spent and somebody, not out in the plains of Waco but maybe in a nice comfortable office in Washington, didn't immerse themselves in the religious tenets of this Branch Davidian group. Because I think judgments were made that they were hostages, and I think that's wrong. Judgments were made that they would react to the gas and other things, the noise, as normal people would, and they weren't normal people, in the sense that they had a belief system that was very abnormal and very different.

But Ms. Sparks tried to get through to somebody. She understood something about their theology. The two lawyers, DeGuerin and Zimmermann, understood something about the theology. And the negotiators for the FBI could have, I believe—and it's easy to say from hindsight because you tried and you tried—but could have known that gas wouldn't drive them out, and it didn't. The noise wouldn't drive them out, and it didn't. But they could have been, shall I say, manipulated out through the Bible or through some other way. But I don't think enough attention was given to that.

Now, I asked the question—Mr. Sage said, if I was in there, I would be out in a New York minute. Was it reasonable to assume that these parents, who have devoted themselves to this Koresh, evil person, who were taught that the outside world was Babylon and that an FBI attack was the beginning of the apocalyptic end, would pick up their infants and run out into the embrace of the Babylonians? Or is it more reasonable to assume they would pick up their suffering children, put wet rags over their mouths and try to find a remote corner where they could pray and wait?

In other words, the question isn't what would you do or I do, but—if the gas were coming in, but what would a Branch Davidian do? And I don't think much attention was given to that. And, again, I'm very surprised in the wake of Jonestown that somebody didn't understand you're dealing with bizarre but fervent beliefs, and the true believer can be approached not through tape recordings of rabbits being slain but theological approaches. And I just think that was a major, major flaw.

Anybody wish to comment?

Mr. JAMAR. Can I respond?

Mr. HYDE. Yes, sir.

Mr. JAMAR. We did consider all of that. We did discuss religion. We did consider the Branch Davidians. We also considered what he would do in the long run, as was discussed earlier today. I think to—the loud noises was a trivial thing. I don't think it had any impact whatsoever. It wasn't started until March 22. That was all—all the negotiation, everything else we had done, was at that point. I don't think it really made any difference.

But I think for you to say that we did not consider religion is just not so, Mr. Chairman. I think that——

Mr. HYDE. Well, you rejected it, obviously, because you thought you could drive them out with tear gas.

Mr. JAMAR. We didn't reject it, sir. We sent the—Tabor's tape in, we sent Phil Arnold's tape in for him to consider. We didn't reject——

Everybody says we rejected this surrender plan. We didn't reject the plan, sir. We went in, let's look, are they responding? Is Koresh doing one thing he said he would do in writing the manuscripts, as the lawyers hoped he would?

He didn't do that, sir. He—the delay we got from them—Steve Schneider tells us he's responsible for editing it. We said, when are we going to see something? This is the 18th of April. Here's 4 days that Koresh could have prepared a manuscript that the lawyers hoped would be done in 2 or 3 days. Four days later, Steve Schneider tells us, I haven't seen the first page, and you're not going to get it until I edit it. What does that tell me after 51 days?

Mr. HYDE. He was working on it, because they had the disk from the woman that was taken.

Mr. JAMAR. If they had that disk, why didn't they give it to us?

Mr. HYDE. Pardon?

Mr. JAMAR. If they had that disk, why didn't they give it to us? If that was so, why didn't Steve Schneider tell us that?

I can tell you why. Because his instructions for 51 days was to stall, give them the same old runaround every day, and he did that. Nothing changed, sir. He—their attitude was the same.

I tell you, I was—I wanted it to work. I wanted that to work as much as anybody else did.

But from the discussion—and our negotiators pressed them. Where are you on the preparation of the—of the seven seal manuscript? If you review those transcripts of the negotiations during those—that period from 14th, 15th, 16th, 17th, you'll see how much the negotiators pressed for progress. It was a constant subject of discussion.

Not one indication that we could expect anything in the near future, which tells me, sir, that it was just another angle by Koresh to stall. And our great fear was, as long as he stalled and he was waiting—from his actions on the 19th, he was waiting for an opportunity to fulfill his prophecy, that he would do it on his time and in his way, and it would be unsafe for everyone.

Mr. HYDE. Well, I regret my time is up. Thank you.

Mr. ZELIFF. Thank you.

We're in the process of a vote. Committees stand recessed for 15 minutes.

[Recess.]

Mr. ZELIFF. The joint subcommittees on Waco will now come to order. Chair yields to Mr. Mica for 5 minutes.

Mr. MICA. Thank you, Mr. Chairman.

Dr. Salem, you were called by the minority and you also briefed the Attorney General on CS gas. In fact, you have been described by the minority as the leading CS gas expert among all the various witnesses that we've heard.

Let me ask you three very important questions. First, as you sit here today, can you tell me if the CS gas at the concentrations put into the compound could not have killed the infants in the compound?

Dr. SALEM. Sir, the concentrations that have been calculated are well below the lethal concentration for CS. And as the committee is aware, CS is really not a gas, although it's been referred to.

Mr. MICA. So you can tell me that the babies and the infants listed on this autopsy report were not killed by CS gas in the concentrations in the compound?

Dr. SALEM. In my professional assessment of the riot control agent CS, I have reviewed the published information and have evaluated it, and the concentrations required to get an effective riot control or to get the involuntary flight response is many thousands times less than what is required to kill.

Mr. MICA. Second, did you tell the Attorney General that infants would not die or be harmed?

Dr. SALEM. I told her that there would be no permanent harm to children, and this was based on what I had reviewed on the

Park and Gemona paper and what was reported by Himsworth and concurred by in Ballentine's work and also in the National Research Council, which is a committee of the National Academy of Sciences, who have reviewed the data. And in the best opinion of all of these people there is no increased sensitivity to the effects of CS on infants, young adults and older people.

Mr. MICA. Did those studies specifically deal with young infants and children, as in this situation?

Dr. SALEM. The one case that has been referred to where an infant had been exposed for up to 2 to 3 hours in a—what appears to be a very high concentration and was hospitalized with a chemical pneumonia, did recover, was cured, and only after 28 days—or after 28 days of hospitalization it was released as cured. And this is——

Mr. MICA. Have you—well, have you ever written an article or published anything on CS gas and particularly with children or infants?

Dr. SALEM. No, I have not. However——

Mr. MICA. Let me ask you, if I may—and I don't mean to cut you off. You said CS gas was best for riot control. That was your opening statement. If we put 24 children and infants in this room and blasted in periodically canisters of CS gas and then even if we bash a hole in the wall for 4 hours, what would be the condition of those children after 4 hours?

Dr. SALEM. Well, I think you'd have to make the calculations of how much material is put in, the volume, the air flow.

Mr. MICA. Well, several canisters, if we tried in here. And then after 48 hours, as the plan was to keep pumping this gas in there, wouldn't they have suffered or be tormented? I mean, adults in the military, Marines suffer and are tormented for just a few minutes. Wouldn't they have been tormented? And then, irregardless of whether they died from the gas, they were suffocated by our actions or incinerated.

Dr. SALEM. Well, as I said, I have not seen the autopsy reports. I don't know if they were suffocated.

Mr. MICA. Well, this is what I have to go on.

I want to also now turn to Mr. Potts. I chair the House Civil Service Subcommittee dealing with personnel issues and the conduct of Federal employees. Were you ever disciplined for your actions or decisions relating to Waco?

Mr. POTTS. No, sir.

Mr. MICA. Were you ever disciplined for your actions or decisions relating to the incident at Ruby Ridge?

Mr. POTTS. Yes, sir, I was.

Mr. MICA. And after these actions were taken, were you elevated to another position, and if so, what?

Mr. POTTS. Well, sir, I was——

Mr. MICA. So you were disciplined?

Mr. POTTS. Yes, sir, I received——

Mr. MICA. And then you were elevated to what position?

Mr. POTTS. I received a letter of censure based on Ruby Ridge.

Mr. MICA. And then what position were you elevated to?

Mr. POTTS. And then I was elevated to Deputy Director.

Mr. MICA. I put a chart up here continuously that no one in the Department of Treasury ended up losing their job in the end, accepting or receiving responsibility for actions of misconduct. Was anybody in the Department of Justice fired or disciplined as a result of the April actions in Waco?

Mr. POTTS. No, sir.

Mr. MICA. I have here a schedule of disciplinary offenses and penalties for FBI employees. One of them is listed—number six is unauthorized possession of, use of or damage to Government owned or leased vehicle. And the penalty provides a minimum of 30 days suspension for an employee who willfully uses or authorizes the—misuses the authorized use of a Government owned or leased vehicle. Was anyone suspended for 30 days?

Mr. POTTS. I just said, sir, there was no one who in my information was disciplined as a result of——

Mr. MICA. Thank you.

Mr. ZELIFF. The gentleman's time is expired.

Mr. Wise, West Virginia, you have 5 minutes.

Mr. WISE. Thank you, Mr. Chairman.

I want to open up—would the panel just raise their hands? Everyone who's paid by the Federal Government, please raise your hand. Mr. Jamar, are you not?

Mr. JAMAR. Retired.

Mr. WISE. You retired. You receive a Federal retirement check?

Mr. JAMAR. Yes.

Mr. WISE. OK. I make this point because the gentleman from North Carolina—and we thank you for your service. The gentleman from North Carolina properly made the point that the only two—that two of the witnesses last night, who, incidentally, are the only two acknowledged experts in CS gas who testified last night, were paid for by the taxpayers. And he's quite correct. This whole panel, with the exception of one retired gentleman, is paid for by the Federal taxpayer. Some of you who have testified previously, in previous panels, were paid for by the Federal taxpayer.

This whole bench of—here of Members of Congress is paid for by the Federal taxpayer. This row of staff sitting behind us and in front of us is paid for by the Federal taxpayer. This is a taxpayer-paid hearing. And whether you think that it's very fruitful hearing or at the end of it you conclude that it was not worth a dime, it's all paid for by the Federal taxpayer. So I think we can get that behind us and acknowledge.

To Mr.—I believe, Mr. Rogers, but if you—if I'm not asking this question properly, if you'd just let me know and I'll direct it to someone else. In terms of the usage of CS gas by domestic law enforcement, U.S. law enforcement agencies, do you have any particular knowledge as to how many agencies still use CS gas in this country, law enforcement agencies?

Mr. ROGERS. No, sir, I don't have definitive knowledge. My impression is that the vast majority use it.

Mr. WISE. And does the FBI still in certain situations use CS gas?

Mr. ROGERS. Yes, sir. It's in our inventory.

Mr. WISE. And, indeed, before and after Waco, has not the FBI used CS gas on several occasions?

Mr. ROGERS. I can't address after Waco. We still have it in our field offices.

Mr. WISE. I noted in the record last night information I had received from the FBI that of 867 State and local law enforcement surveyed 688 maintain CS gas in their inventory. So in terms of a tool for law enforcement, CS gas is still considered appropriate to use; is that correct?

Mr. ROGERS. That is correct.

Mr. WISE. Dr. Salem, I'm going to turn to you. My first question—I have been handed a curriculum vitae for Dr. Harry Salem. Is this—I don't know whether you can see from here. Is this an accurate—is this your resume?

Dr. SALEM. Yes, sir.

Mr. WISE. Mr. Chairman, I don't know whether it has been handed out. I believe it has across both sides of the aisle. I would ask unanimous consent that that this be made a part of the record.

Mr. ZELIFF. Without objection, so ordered.

[The information follows:]

Curriculum Vitae

DR. HARRY SALEM
109-1D Idlewild St.
Bel Air, MD 21014

(410) 836-9244

EDUCATION

1955-1958	University of Toronto, Toronto, Ontario, Canada Pharmacology	Ph.D.
1953-1955	University of Toronto, Toronto, Ontario, Canada Pharmacology	M.A.
1950-1953	University of Michigan, Ann Arbor, Michigan Pharmacy	B.Sc.
1947-1950	University of Western Ontario, London, Ontario, Canada General Sciences	B.A.
1958-1959	Post Doctoral Studies, University of Toronto	

PROFESSIONAL EXPERIENCE

1994-	Edgewood Research, Development & Engineering Center, Aberdeen Proving Ground, Maryland Chief Scientist, Life Sciences
1992-1994	Edgewood Research, Development & Engineering Center, Aberdeen Proving Ground, Maryland Chief, Life Sciences Department
1984-1992	Chemical Research, Development & Engineering Center, Aberdeen Proving Ground, Maryland Chief, Toxicology Division
1989-1990	Chemical Research, Development & Engineering Center Director of Research (Acting)

1980-1984	ToxiGenics, Inc., Decatur, Illinois President
1979-1980	Cosmopolitan Safety Evaluation, Inc., Sommerville, N.J. President and Chief Toxicologist
1977-1980	Cannon Laboratories Inc., Reading, Pennsylvania President and Chief Toxicologist
1972-1977	Cooper Laboratories, Inc., Cedar Knolls, N.J. Director of Pharmacology and Toxicology
1970-1972	Smith Miller and Patch, Inc., New Brunswick, N.J. Director of Pharmacology and Toxicology
1965-1970	The National Drug Company, Philadelphia, Pa Director, Respiratory Research Laboratories
1962-1965	Smith Kline and French Laboratories, Philadelphia, Pa Senior Pharmacologist
1959-1962	Air Shields, Inc., Hatboro, Pa Pharmacologist
1958-1959	University of Toronto & Attorney General's Crime Lab Fellow and Research Assistant

SPECIAL TRAINING

Pulmonary Mechanics

1963- Cardiovascular Research Institute, University of California, San Francisco with Drs. Julius Comroe and Jay Nadel.

Medical School

University of the East, Manila, Philippines (1977). Twelve additional months required for MD degree.

Pharmacy

Licensed to practice in the Commonwealth of Pennsylvania.

Toxicology

Certified in General Toxicology by the Academy of Toxicological Sciences.

Fellowships

New York Academy of Sciences
American College of Clinical Pharmacology
Academy of Toxicological Sciences

TEACHING EXPERIENCE

1992 -	Drexel University Adjunct Professor of Chemical Toxicology
1975 - 1983	University of Pennsylvania, School of Medicine. Associate Professor of Pharmacology
1965 - Current	Temple University, College of Pharmacy Adjunct Professor of Environmental Health
1968 - 1975	University of Pennsylvania, School of Medicine Assistant Professor of Pharmacology
1966 - 1968	University of Pennsylvania, School of Medicine Associate in Pharmacology
1960 - 1966	University of Pennsylvania, School of Medicine Instructor in Pharmacology
1953 - 1958	University of Toronto Instructor in Pharmacology and Toxicology

ADDITIONAL TEACHING & CONSULTING EXPERIENCE

Philadelphia College of Osteopathic Medicine
Philadelphia College of Pharmacy and Sciences
University of the East Medical School, Philippines
Philippine Academy of Ophthalmology & Otolaryngology 1976 Convocation
Rutgers College of Pharmacy Continuing Education
Bio-Evaluations, Inc. Continuing Education
Detroit Alumni Chapter of AZO Pharmaceutical Fraternity Visiting Lectureship 1976
Canadian Federation Meetings
U.S.A. Federation Meetings
Executive Enterprises, Inc.: Toxic Substances Control Act Course - Scientific and Technical Aspects
Drug Information Association Meetings - Chairman & Speaker

1968 - 1980 Medical Documentation Service, College of Physicians, Philadelphia, Pa.
Consulting Pharmacologist and Toxicologist

1978 - 1980 Franklin Research Center, Philadelphia, Pa.
Consulting Toxicologist and Pharmacologist

Consultant to Legal Firms in Philadelphia, New Jersey and New York

PROFESSIONAL MEMBERSHIPS:

American Association for the Advancement of Science
American Association of University Professors
American Chemical Society
American College of Clinical Pharmacology - Fellow
American College of Toxicology - Charter Member, Finance and Education Committees
American Conference of Governmental Industrial Hygienists, Inc.
American Society of Clinical Pharmacology and Therapeutics
American Society for Pharmacology and Experimental Therapeutics
Army Acquisition Corps (26 August 1994)
Association of Government Toxicologists - President (1988-89)
Chemical Corps Association, Inc.
European Society of Toxicology
Food Safety Specialty Section - Society of Toxicology
International Regulatory Pharmacology and Toxicology
International Society on Toxinology
National Capitol Area Chapter, Society of Toxicology (Vice President 1994-95)
New York Academy of Sciences - Fellow
Society of Comparative Ophthalmology - Vice President
Society of Toxicology - Placement Service Committee
Specialty Section on Inhalation, Society of Toxicology - Councilor and Chairman Technical Committee
Sigma Xi (President 1993-94)

EDITORIAL BOARD MEMBERSHIPS:

Current
Journal of Applied Toxicology - Editor-in-chief
Inhalation Toxicology

Previous
Drug Information Association Journal
Journal of Clinical Research Practices and Drug Regulatory Affairs
Journal of Environmental Pathology Toxicology and Oncology

COMMITTEE SERVICE:

AMC Headquarters, U.S. Army-Program Management Advisory Group
American College of Toxicology - Education Committee - Finance Committee
Biological Effects of Low Level Exposure (BELLE) - Advisory Committee
CRDEC, APG-Life Science Committee
CRDEC, APG-Toxin Defense Steering Committee
CRDEC, APG-Human Estimates Committee
Harford Community College- Curriculum Advisory Committee
National Cancer Institute- Chemical Selection Working Group
National Science Foundation/Industry/University Cooperative
Center for Research in Hazardous and Toxic Substances -
Monitor for Health Effects Assessment Division
Society of Comparative Ophthalmology - Steering Committee
Society of Toxicology - Placement Service Committee
Specialty Section on Inhalation, Society of Toxicology -
Technical Committee, Chairman and Councilor
TSCA Interagency Testing Committee
Academy of Toxicological Sciences, Professional Standards Evaluation Board
Invited as Expert to Forum Colloquium on Risk Assessment for Cholinesterase
Inhibitors, 30 June 1988 by EPA Washington, DC
Walter Reed Army Institute of Research USAMRDC -
Toxicology Steering Committee (08/89-07/90)
NAS/NRC/BAST, Strategic Technologies for the Army (Star Study) *Army Liaison Person for Biotechnology and Biochemistry.*
Janssen Research Council
The Technical Cooperative Program (International)
-Action Group 35 (Chair)
-Action Group 37
-MOU on Human Estimates (Chair)

AWARDS

U.S. Patent No. 4,097,577
"Method of Lowering Intraocular Pressure with Antazoline"
H. Salem & D. M. Aviado, 1978

Who's Who in the East

Who's Who in Finance and Industry

American Men and Women of Science

Letter of Appreciation: - 5 May 1986 from Technical Director for Chemical and

Biological Defensive Materiel Briefing for International Meeting

Certificate of Appreciation: Rotary Club, 4 April 1987

Letter of Appreciation: State of New Jersey Division of Criminal Justice for " considerable assistance during investigation and prosecution of Richard Kuklinski for several cyanide related murder charges", 8 April 1988

Association of Government Toxicologists Commendation Plaque for Outstanding Service, 1989

Department of the Army Decoration for Meritorious Service, 1 May 1989

Certificate of Appreciation and Plaque
Society of Toxicology in recognition of Dedicated Service to the Inhalation Specialty Section, February 1990 and 1993

Certificate of Appreciation for Operation Desert Shield / Storm (CRDEC), October 1990

Special Act and Cash Award for Desert Shield/Storm (U.S. Army Materiel Command)
September 1991

Certificate of Appreciation for Operation Safe Removal, Spring Valley, D.C. (CBDA), 1993

Inhalation Specialty Section Award Plaque for Developing Criteria for Acute Testing of Aerosol Products which was pivital in EPA's Revision of Acute Testing Guidelines, 1993

Certificate of Achievement for Outstanding and Significant Contributions in Support of Health Hazards Working Group, March 1994
The Surgeon General, Department of the Army

AMC Special Features Award - 1988

PMRS Cash Awards - 1985, 1986, 1987, 1988, 1989, 1990

PUBLICATIONS

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Bilbey, D.L.J. and Salem, H. (1959). "Influence of Sulfur Dioxide Inhalation on the Phagocytic Activity of the Macrophage System", Nature, 184:722-723.

Bilbey, D.L.J., Salem, H. and Grossman, M.H. (1960). "The Anatomical Basis of the Straub Phenomenon", Brit. J. Pharmacol., 15:540-543.

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Nadel, J.A., Salem, H., Tamplin, B. and Tokiwa, Y. (1965). "Mechanism of Bron-

choconstriction", Arch. Environ. Health. 10:175-178.

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Beall, J.R. and Salem, H. (1990). "Pragmatics of Risk Assessment As Illustrated with Acrylonitrile". Special Issue. The Science of the Total Environment 99:213-356.

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Seifried, H. and Salem, H. (1991). "Cardiac Toxicology of Foodstuffs". In: Principles of Cardiac Toxicology. S.I. Baskin, (Ed.) CRC Press Inc., pp. 209-216.

Zakhari, S. and Salem, H. (1991) "Cardiac Toxicology of Solvents". In: Principles of Cardiac Toxicology. S.I. Baskin, (Ed.) CRC Press Inc., pp. 465-502.

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Salem, H. and Baskin, S.I. (1993) Perspectives on the Impact of Biotechnology to Increase Drug Efficacy and Safety. In: New Technologies and Concepts for Reducing Drug Toxicities. H. Salem and S.I. Baskin (Eds), CRC Press Inc., pp. 171-177.

Salem. H., Green, S., Bigelow, S.W. Borzelleca, J.F. and Baskin, S. I., (Eds) (1992) New Food and Food Chemicals: Safety and Regulatory Considerations. Critical Reviews in Food Science and Nutrition. CRC Press, Inc., 32: 105-195.

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Krishnan, P.H., Katz, S.A.. Birenzvige, A. and Salem, H. (1988). The Role of Chromium in ASC Whetlerite. *Carbon* 26:914. Letter to the Editor.

Mr. WISE. And for the U.S. Government, do you consider yourself to be a specialist in the area of gas and, particularly, CS gas?

Dr. SALEM. Yes. I'm an inhalation toxicologist. I have spent 40 years in the field. I have edited a book on inhalation toxicology. I have conducted original research in respiratory reflexes and repository irritants. I am the chairman of the Inhalation Specialty Section for the Society of Toxicology. I'm the editor-in-chief of the Journal of Applied Toxicology and serve on the editorial board of Journal of Inhalation Toxicology.

Mr. WISE. Thank you, Doctor. Did you hear the testimony last night of Dr. Upshaw and Dr. Rice?

Dr. SALEM. No, sir.

Mr. WISE. OK. I have a lot of questions, but I am not going to get to them in this round, apparently.

Let me ask you what effect would CS gas have on children who were covered with wet towels?

Dr. SALEM. Dampness increases the skin irritation of CS, but, other than that, it would probably degrade the CS so that they were not inhaling the CS.

Mr. WISE. What impact would the presence of whether there are 35-knot winds or 25-knot winds, as was suggested by one witness last night, and openings in the windows and walls of the building have on the effectiveness of CS gas?

Dr. SALEM. That would reduce the concentration so that it would probably not reach the effective concentrations.

Mr. WISE. If we're not talking about a 10- by 9- by 8-foot room but instead a compound the size of the Waco compound, would that further dilute the impact of CS gas?

Dr. SALEM. Yes, sir.

Mr. WISE. I have more questions at another time if I'm able to get back. Thank you.

Mr. ZELIFF. Thank you very much.

The Chair yields to Mr. Blute.

Mr. BLUTE. Thank you very much, Mr. Chairman. I want to thank the witnesses for their testimony. I want to ask one clarifying point and yield to the chairman for some followup questions.

Mr. Jamar, last night there was some discussion with Dr. Stone about something that you had said, and it was a side issue but I think an important one. You had said something about the fact that when the ATF cattle cars pulled up to the compound, the conditions existed for a more severe ambush and perhaps more loss of life of the ATF agents.

Mr. JAMAR. We discussed that this morning with Mr. Schiff. I think the context of that was that it could have been a greater tragedy than it was. But what I said earlier was the fact that they didn't kill more ATF agents is hardly redeeming.

Mr. BLUTE. We certainly understand that.

Mr. JAMAR. But that's the context of that. I don't know why it's a subject of discussion now.

Mr. BLUTE. The point being that if the Davidians' first impulse was ambush, then they perhaps could have—and again this is speculation—delivered a more fatal blow to more agents.

Mr. JAMAR. I think Jim Cavanaugh's testimony is extremely clear on that. The barrage of gunfire was an ambush, and they

kept firing until there was a cease-fire, so I don't think there is any question——

Mr. BLUTE. I understand that. I'm not saying the ambush later on was not an ambush. I'm not arguing that. I am saying that conditions existed where this could have been a worse ambush. Would you agree with that? In other words, if the Davidians began firing while the ATF agents were still in the cattle cars, could this——

Mr. JAMAR. I did not discuss that, though. That was not a point of discussion.

Mr. BLUTE [continuing]. The various issues of whether it was wise of the ATF to pull the cattle cars up so close in this engagement, but I wanted to clarify that you did think that conditions existed where it could have been worse.

Mr. JAMAR. I tell you, it's the grace of God that more ATF agents weren't killed. I don't think there is any question about that.

Mr. BLUTE. Thank you very much.

I would yield the remainder of my time to Chairman Zeliff.

Mr. ZELIFF. Thank you, Mr. Blute.

Mr. Sage and Mr. Jamar, the problem that I have on this thing and what is in the pit of my stomach is watching that building, that scenario, that tragedy, the tanks going in, coming out, going in, the loudspeakers yelling or blaring out saying, "This is not an assault," and it just doesn't—if I tried to explain this at a town meeting in New Hampshire, I would have a great deal of difficulty in trying to justify how our Government—why our Government did this with such use of force, what we did, I mean, no matter who shoots first or who started the fire.

The thing that keeps coming back is why was the military there? Why were the tanks there? And this is the thing that bothers me an awful lot.

And I go back to the other day, which is still driving me crazy, Koresh's attorneys, and I guess Zimmermann and DeGuerin when they were led to believe by discussion with you that they had plenty of time—I mean, I assume that that's correct. I mean, at least that's—they said that they were told by you that they still had time, they had plenty of time, that they had a surrender offer. This was on April 14 from Koresh.

And I guess from that point—and you, all three of you indicated—you and Mr. Potts and Mr. Sage—had indicated that, as you reported this to your superiors, you didn't take it seriously. From that point on, to the use of CS gas, did you ever say directly to Koresh, "We need to see proof that you are writing the seals or we will go in with the gas"?

Mr. JAMAR. No.

Mr. ZELIFF. Not at the time you were puncturing the building but——

Mr. JAMAR. Starting April 14, when Dick DeGuerin told me, this is—remember, this is the point I tried to make with Congressman Hyde a while ago. We sent the tape in of Arnold and Tabor, which was the basis of the idea for Dick DeGuerin's discussion with Koresh, and he pitched Koresh on it, and he sent that letter out.

OK, the discussion of me saying there's plenty of time, the context of that was he would begin writing the manuscripts. He would take 2 days, maybe 3, for each one. He would be diligent—implied

that he would be diligent in that, and we would wait exactly like we had been doing. However, I didn't say we'd wait for 14 days. I just said, we've got plenty of time, OK?

Now, on April 15, 16, 17, 18, the negotiators pressed him. What's the progress? How we doing here? Are we doing anything on the transcripts—on the manuscripts?

And the two conversations that strike me from my memory most from that was that the discussion with Judy Schneider is she's asking for a word processor so she can proceed. We end up sending her—because she was going to be the typist. We ended up sending her some ribbons.

But the main conversation that is imbedded in my mind is Steve Schneider. Steve Schneider told us for days that he always edits—because of Koresh's lack of education, he helps him in preparation of written material.

On April 18, Steve Schneider says to us, you know, he says, "I have not seen the first page. I have not edited a thing." OK. This is April 18. The promise was—and even I think there was implication that he had been writing on them already.

The promise was that there would be a manuscript every 2 days, take about 2 days. The next 4 days, we got nothing. What's that tell me? Well, 51 days we had nothing. I think that's the conclusion.

I did not reject the attorneys' plan, not at all. It was not rejected. What it does was it gave Koresh a chance to do something to look like he might fulfill. He did not.

Mr. ZELIFF. On the 15th, it never came out that you said directly to Koresh, that, "If you don't come out with this in 3 days or 4 days, we will use the gas?"

Mr. JAMAR. You never give somebody like that an ultimatum, Mr. Chairman. Never give ultimatums.

Mr. ZELIFF. Let me, if I can, ask unanimous consent to introduce as evidence—this is Ruth Riddle's decoded message of the Seven Seals of the Book of Revelation. This was pulled out of the fire, the tapes were, and then—this was written up as evidence that he was working on that message on the seven seals.

[The information follows:]

Transcript of:
"The Last Recorded Words of David Koresh"
(Recorded April 16&18, 1993)

NARRATION: This tape contains the last recorded words of David Koresh. It is taken from telephone conversations between David Koresh and the FBI negotiators. It was recorded by the government, and the tapes were recently released by the Justice Department. The tape has two segments. The first is from April 16 - a Friday. It is from the wee hours of the morning, and David has just optimistically reported to the FBI negotiator that he's finished the first chapter, or segment of his manuscript on the Seven Seals of the book of Revelation. He had pledged on the previous Wednesday, and sent out a signed legal agreement, that he would exit the Mt. Carmel Center upon completion of the manuscript. The tone of the conversation is quite optimistic and upbeat, both from David's side and from the side of the FBI listening to his report.

KORESH: . . . I say that when I get through writing these, and they're given to my attorney, and my attorney hands them over - What's the two theologians names?
Steve Schneider: Philip Arnold and Jim Tabor.
Koresh: Philip Arnold and Jim Tabor who has shown that they have a sincere interest in these things - you see. Then I can spend all my time in jail, and people can go ahead and ask me all the stupid questions they want - cause they're not gonna ask me about the seals. They're gonna say, "Ah, do you molest young ladies?" "Ah, have you eaten babies?" "Do you sacrifice people?" "Ah, do you make automatic weapons?" "Ah, do you have [?]" That's what they're gonna be interested in - sensationalism.
FBI: That's why you need to get it done before you leave there then.
Koresh: That's why I'm gonna complete it, because you see, you know as well as I do that people in this world they want something dramatic and sensational. They don't want to have to sit - No one's gonna sit there - let me sit there in front of a camera and read Psalms 40 to them - to prove the first seal. Dick, it's a real world, and that's why I'm sympathetic with your position. I realize you're frustrated, and I agree with you.
FBI: I'm not frustrated. I went home and I'm back. I'm no longer frustrated. I never was frustrated.
KORESH: Did you take a shower for me?
FBI: Well, yeah. I took a couple of them for you.
KORESH: Thank you. I appreciate it.
FBI: Now listen. Let's get back to the point in hand. This ah - you know - the writing of the seals. OK. You've got to do that in there, and it's gonna take you x amount of time. Just tell me this David - are you saying that when you finish that manuscript -
KORESH: Then I'm not bound any longer [unintelligible] -
FBI: No. But see, that doesn't answer the question.
KORESH: Then I'll be out - yes - definitely.
FBI: I know you'll be out, but that could - excuse me I've got a cold. That could mean a lot of things David. That could mean -
KORESH: I'll be in custody in the jailhouse. You can come down there and feed me bananas if you want to.
FBI: I know - I know that some point in time that's true. But I'm getting from you - I'm asking you, "When that is finished, are you than telling me that you are coming out the next day, or two hours after you send that out or what?"
KORESH: Oh, I'll probably - when I - when I bring it out - see - my attorney is gonna get the - get to the copy.
FBI: Right.
KORESH: OK? And as soon as he hands it over to the scholars - the theologians -
FBI: Um, hm.
KORESH: Right? That's when - he's gonna come back, and that's when I'm going to go out with him, because he said point blank that - you know - one of the guarantees of me arriving down there is that he is gonna go with me.
FBI: So you go on paper here and said that David Koresh told me that as soon as he finishes this manuscript - the seven seals - of which you've finished the first chapter dealing with the first seal -
KORESH: The first seal - right.
FBI: That you're gonna make that available -

KORESH: I'll be splitting out of this place. I'm so sick of MRE's - Dick - that ah -
FBI: Well, I just want to make sure that I have this right - that you're coming out. As soon as that's finished -
KORESH: That's what - it was said by the attorney's -
FBI: Well, I know - I know
KORESH: That's what I'm saying -
FBI: OK.
KORESH: It's clarified. Lock, stock, and barrel it.
FBI: I mean - I've heard you say that you're coming out after, but that is not specific. That's a game that we all can play.
KORESH: It's - look, I know. Dick -
FBI: But I'm asking you for your word You say that you're coming out as soon as that's done, and you give up the manuscript to DeGuerin who is gonna make copies available for Arnold and the other - the other fella -
KORESH: Right.
FBI: The other Biblical scholar, and then you are coming out with that manuscript.
KORESH: I'm outta here. And he's he's gonna come, and the way the procession is to be - I'm to go out first with him, and then I think, "You're last, right Steve?"
Steve Schneider: Yeah.
KORESH: With his attorney, and the other people - the other people in between.
FBI: OK. Then - you know what? I'm keeping you from getting back to work. So I'm - you know what I'm gonna do? I'm gonna let you go so that you can get back to work, because David, frankly I'm eagerly awaiting this manuscript.
KORESH: Well, I'll tell you what. It's gonna blow your socks off.
FBI: Well - I'm - I'm perfectly willing to - to read it, and I'm looking forward to it as a member -
KORESH: You'll either hate me or love me then.
FBI: Well, I want to read it - and then - I'll make a decision then, and we'll see how it goes. And in the meantime, ah - you know - let's get that thing written.

NARRATION: The first chapter of David's manuscript that had been completed was carried out of the burning building on April 19 by his secretary and stenographer Ruth Riddle. That was on a computer disk. This disk was subsequently turned over to David's attorney Dick DeGuerin, and according to David's instructions DeGuerin passed it on to James Tabor and Phil Arnold. It's now published in the appendix to a recent book, "Why Waco? Cults and the Battle for Religious Freedom in America." It also - the book contains a commentary by Arnold and Tabor on the manuscript. This next segment of the tape is indeed the last recorded words, or conversation of David Koresh. It was recorded on April the 18th - Sunday - the day before the fire at about two o'clock in the afternoon. Koresh called the FBI negotiators. He's quite upset and angry, because they have begun to remove cars and clear the area in front of the building. First of all, he is upset that evidence might be destroyed that would relate to what had happened on February 28 in the initial BATF raid on Mt.Carmel. Secondly, he is concerned about property damage in general. And it's clear from the tone of his voice that he suspects that something might be up, and that indeed the agreement that he feels he's reached with the FBI to write the manuscript, and then exit peacefully, could fall apart and not be carried out.

FBI: This is Henry.
KORESH: Ah - Henry, this is Dave.
FBI: Hi Dave.
KORESH: Look. The ah - the generals out here - right? You have a hard time controlling them, right?
FBI: I don't control them. No.
KORESH: OK. Well look. We have done everything we can to be able to communicate in a nice, passionate way. We've ah - you know - I've told you what our work with God is. And ah - we've been kind. We've not been your everyday kind of cult. We've not been your everyday kind of terrorist which I'm sure you - you're familiar with having to deal with.
FBI: Um, hm.
KORESH: And a lot of the things that the FBI, or these generals are doing is just kinda way beyond the scope of reason. And they're not only destroying private property, they're also removing evidences. And this doesn't seem

like that ah - these are - these are moves that should be made by a government who says to a people that we're going to be able to take this up in a court of law. I mean - they're not ever - they're not going to be able to replace a lot of things here. Like that 68 SS El Camino that belonged to Paul Fatta?
FBI: Um, hm.
KORESH: They'll never be able to replace that. They don't have any more of those. And ah - the 68 Camero and other things out here in the front.
FBI: Um, hm.
KORESH: They can't replace that. They just can't replace it.
FBI: Um, hm.
KORESH: And - ah - they keep - they keep doing these kind of things it's just proving to us that they're not - they're not showing good faith in their part, and I just - I just suggest they shouldn't do it.
FBI: I understand what you're saying, and I will impart that ah -
KORESH: In all courtesy's please - please impart that, because - because it's coming to the point to where ah - you know - God in heaven has somewhat to do also. And it's just really coming to the point of really, "What - What do you men really want?"
FBI: I think what - you know - just - this is - I'm just imparting to you what my perception is. And my perception is that - that - what they want is they want you and everybody to come out. You know - I -
KORESH: I don't think so. I think what they're showing is that they don't want that.
FBI: Well, I think that - that is exactly what they want.
KORESH: No. They're not gonna - they're not gonna - they're not gonna get that. They're not gonna get that by what they're doing right now. They're gonna get exactly the opposite - exactly the opposite. They're gonna get wrath on certain people. They're gonna get anger from certain guys. Now I can't control everybody here.
FBI: I think you can.
KORESH: No. I can't. You gotta understand John -
FBI: Henry.
KORESH: Henry - I'm sorry. In 1985, I presented a truth. And everybody that's here - I had to debate and I had to talk to, and I had show from the scriptures. I had to prove my point for many hours, days, months, and sometimes years with certain people here.
FBI: Um, hm.
KORESH: They went to scholars. They went to theologians. I have a very unique group here.
FBI: Yes. You do.
KORESH: Not ignorant people - not stupid people. Now there are some people -that in the beginning - that went out like Kevin and Brad. Individuals that were - you know - people that wee out there bar rollers and stuff like that. Tough and tough guys. Now they're not the theologians of the world, but they're guys that need a lot of patience, and - you know - with a little bit of refinement and a little bit of proof to them - they can - they can be good people.
FBI: Um, hm.
KORESH: But ah - but I would really and in all honesty and in good faith tell these generals to ah - to - to back up. They don't need to tear up anymore of this property. You tell us out of one side of the mouth, we're going to be able to come back here and all this. And ah - you know - we're gonna take this up in court, and on the other hand you're showing us there's not gonna be nothing to come back to.
FBI: I think the problem with this thing David is that this thing has lasted way too long.
KORESH: Oh, it - it - it has. It should have never gotten started this way -
FBI: You're right.
KORESH: And that was not our fault.
FBI: Ok. But -
KORESH: Now you don't wish to speak to the issues of the beginning of this -
FBI: No. I don't. And - and what the issues were - you know at that time is something else. The problem is not what the issues were at that time - the problem is this has lasted way too long. You know -
KORESH: I'm gonna finish my book or I'm not gonna finish my book.
FBI: Well, I hope that you do.
KORESH: Well, let me tell you this. These men who everyday - we try to show them good faith - have walked out in front of us, they've driven their tanks up to us, they've bust in the side of the building a little bit one time.

You said that was a mistake - that was not in your control - that wasn't in the commander's wishes. You know - all of this has been shown that if these guys want to fight - I don't want to fight. I - I want - I'm a life too, and there's a lot of people in here who are alive. There's children in here.
FBI: That's right.
KORESH: And we're also American's. And I think - I think that America has a patronage - a very clear patronage of individual citizens who - who - who - who have a breaking point.
FBI: Well, that's true.
KORESH: The government this stronger - it can come on to something that we have worked for hard. We worked when we got on this property. Al lot of hard hours. This place was a dump. We fixed it up. We built this little house here. It's not extravagant. You know - there's a lot of people here with a high commission and a lot of love and concern, not just for our own lives, but for everybody's lives. And if this is the way our government is showing the world what its tactics are to get someone to - to - to - to - to do as they wish when realistically, our - our rights have been infringed upon right and left.
FBI: But there's a way to resolve that David.
KORESH: Yes. Yes.
FBI: And the way to resolve it is for you to come out and lead your people out.
KORESH: Your way is that you're gonna keep - you're gonna keep destroying our property.
FBI: This - this probably would not have had to happen -
KORESH: It never did have to happen.
FBI: That's right. And - and then - you know - if you would have come out on - on the day that you indicated that you promised that you were gonna come out none of this would have taken place.
KORESH: Look. You denounce the fact that I have a God that communicates with me. That's - that's the first mistake that we - that we make.
FBI: Nobody - nobody - nobody is saying anything about your religious beliefs, your thoughts. your ideas -
KORESH: Listen. But you are -
FBI: Or anything like that.
KORESH: You're - you're saying -
FBI: The same things that you can do there you could do out - out here.
KORESH: That's what you say. I - I think that you are lying. As a matter of fact, I know that when the first month or so that I'm out, I'm gonna be bombarded all of the time with nothing but people wanting to know Koresh asking this - asking that.
FBI: And if you were working on the seven seals - I mean - nobody would bother why. I mean - why would you - why would that have to happen?
KORESH: I have my responsibility also to [you]. Come on, look at the reality of things.
FBI: And the reality of things is that there are priorities.
KORESH: OK. But you put your priorities -
FBI: And you're priority and everybody's priority should be in the safety of the children -
KORESH: All right.
FBI: And the safety of the women, and the safety of everybody
KORESH: You're fixing - you are fixing to ruin - your commanders are fixing to ruin the safety of my and my children. My life - the lives of my wives - the lives of my friends - my family. You're fixing to step across the ribbon.
FBI: I think that - that was something that you brought on. It has nothing to do with the commanders, David.
KORESH: All right. I brought on - if this - if this is the corner of the box that you place me into -
FBI: I think that you're placing yourself in that David. I don't think anybody is forcing it -
KORESH: No. No. You're the one who moving forward. You're the one who -who has violated - your generals have violated our constitutional rights. You have made us guilty before proving so.
FBI: I don't think so.
KORESH: You actively brought a band of - of people who didn't announce themselves. They came - I was at the front door. I was willing to talk to them. They shot at me first.
FBI: See, now you're talking about - you're talking about the ATF.
KORESH: About something that you don't want to prove as a matter of a fact. You're telling me - now you've - now you telling me that I am under arrest. I have to come out and I -

FBI: When somebody's under arrest that doesn't mean that it - that you've already been proven guilty. It just means that you've been charged.
KORESH: No. I'm being punished. We've already been punished. We've been placed in jail. We're being punished as guilty.
FBI: Well, that is something that you chose for everybody inside.
KORESH: That is not correct.
FBI: Sure it is because -
KORESH: That is something that you chose as a confinement.
FBI: Because if you had walked out that day as you promised, by now who knows where we would have been You know - you probably would be out on bail for God sakes.
KORESH: John - all I can say is - is that if you want to - to - to place this in the history books as one of the saddest days in the world -
FBI: Well, I think that the - the - the rules for your safety still apply. There's no reason - you know - to think that - that - that they shouldn't apply.
KORESH: OK. I understand your rules. I'm just simply asking you in all good faith, and all good manner to - you tell the general it's enough to tear up our property.
FBI: I will tell them exactly what you said. But you need to understand that - um - I'm talking up. It's not - you know - talking down. So - you know - what I suggest and what I will suggest is exactly what you said. I've suggested that and I've suggested other things. I have no - no problem in - ah - you know -
KORESH: You tell em we love em. We love em and - you know -
FBI: And you're willing to send out thirty people.
KORESH: Look.
FBI: Fifty?
KORESH: Whoever wants to go out can go out.
FBI: No. No. No. No. Don't tell me that. Tell me that you're sending somebody out.
KORESH: I'm not going to - see - you don't understand about these people yet.
FBI: And you don't understand about the people here yet either.
KORESH: OK. Well if that's the way we want to play then we come to a point where -
FBI: I'm not wanting to play anything -
KORESH: But it - you are playing.
FBI: No. I'm not. I'm telling you.
KORESH: Everyone in the tanks - everyone in the tanks out there is playing.
FBI: No. Nobody is. People just want to see some progress.
KORESH: Look some progress is being made. You don't realize what kind of progress is being made. There are people all over this world who are going to benefit from this book of the seven seals. You don't seem to understand.
FBI: And what you don't seem to understand is - is that the people here want to see that kind of progress, but other kind of progress. There's's no reason why you couldn't be doing the same very thing that you are doing now within the place out here.
KORESH: That's not true. What you're saying is not based on truth.
FBI: Why not? Why not? What do you mean it's not -
KORESH: Because it's not.
FBI: Your attorney is gonna be your attorney whether you're in there or out here. Anything that you want your - all you'd have to do is - is furnish it to him.
KORESH: An attorney -
FBI: Why would he not comply with your wishes?
KORESH: That's - the legal system is not the majority of the attorney. The legal system is a completely sophisticated - lot's of - lot's of Indian chief - ah -system. It's not just where you got one guy who is hired to speak on your behalf in a court case in front of a jury.
FBI: Yes. But - but what I'm saying -
KORESH: There's more to it than just - I was in jail in 1988.
FBI: And - and how did it come out?
KORESH: It came out wonderful, because -

FBI: Well, there you go. There you go.
KORESH: Well the thing of it is - is that you don't understand the amount of cost it takes to get that legal representation too.
FBI: Well -
KORESH: And this was something - this was something that the Sheriff's department got us in.
FBI: Well, that was - that was then. You have an attorney now. You know - the same work that you're doing there you can be doing out here.
KORESH: It's a different more high profile case type situation. I just - I just suggest that it would be a very bad thing for you to - to keep destroying all this evidence out here.
FBI: Well - you - know - I really don't have any control over that.
KORESH: I mean what are they doing? Are they - are you covering up the ATF? That's exactly what it appears you're doing.
FBI: David, what we're trying to do is were trying -
KORESH: It's wrong! You're doing wrong before God - before man. You are doing wrong! You adding to your wrong.
FBI: David, you're the one that's doing wrong.
KORESH: No. No. No. No. No. No. No.
FBI: You seem to have -
KORESH: No.
FBI: No concern about -
KORESH: You know we can't stay in here forever.
FBI: Anybody within the place except yourself.
KORESH: You know that we can't stay in here forever.
FBI: You know - if you could send - OK. Well send fifty people out. Send fifty people out right now.
KORESH: Does fifty of you want to go out?
FBI: You don't have to ask. All you have to do is say, "Look, I want fifty volunteers," and they'll come out. If you send fifty people out.
KORESH: They're saying because of these things they want to stay the more.
FBI: And I guess that you have no control over anybody. You know -
KORESH: You've got to understand, what I have control -
FBI: This is your responsibility. This is your responsibility because you're the leader. Their safety is in your hands. These people look -

NARRATION: The tape breaks off abruptly at this point, and I'll close this tape with a final short segment from Friday April 16.
FBI: Now are you telling me David - I want to get this clear in my own mind. Are you telling me that as soon as you reduce the seven seals to a written form that you're coming out of there. I don't mean two days later -
KORESH: I have no reason - I have no reason to -
FBI: I know what you're saying, but answer my question if you would please - definitely. I mean - I want to get an answer to this, "Are you coming out as soon as your done -"
KORESH: I'm coming out.
FBI: Or are you coming out afterwards at some point in time.
KORESH: After I get the thing - see Dick, you don't seem to understand. We are going to fulfill our commitment to God. Now, if you would allow me to show you what has been pre-written by the prophets you would know what I am doing.
FBI: Well, I'm asking you -
KORESH: You see -
FBI: A simple question though. I -
KORESH: And I'm giving you the simple answer, "Yes." "Yes." "Yes." I never intended to die in here.

End of tape

The Decoded Message of the Seven Seals of the Book of Revelation

By David Koresh

EDITORIAL PREFACE

On Wednesday, April 14th, following the eight day Passover celebration David Koresh released what turned out to be his final letter through his lawyer, Dick DeGuerin. In it he joyfully reported that "his waiting period was over" and that upon completion of a manuscript containing the "decoded message of the Seven Seals" he would come out. He considered the composition of this manuscript to be a privilege allowed him by God, the direct answer to his prayers which he had sought for the past seven weeks.

Although many questioned both the ability and intention of David Koresh to produce this manuscript, we received this news with great relief. We had been urging David for several weeks through radio broadcasts and cassette tapes to exit Mt. Carmel peacefully as he now proposed to do. We had based our case to him on interpretations of the Book of Revelation which we felt he might find persuasive. This was only five days before the tragic fire on April 19th.

We now know that David Koresh did begin work on his manuscript and truly took it most seriously. A computer disk containing his dictated text was carried out of Mt. Carmel by Ruth Riddle, a survivor of the fire. Indeed, Ruth tells us that she and David worked for several hours on Sunday night, the last night of his life; him dictating and she typing out his thoughts. She reports that the Branch Davidians were calm and joyful that evening at the prospect of David completing his work and their impending exodus.

David's work will speak for itself to those who are interested in his exegesis and understanding of the mysterious Seven Seals of the Book of Revelation. Regardless of one's evaluation of the content, one point is clear--in a short time, under most trying circumstances, David Koresh had produced a rather substantial piece of work. He had completed the Preface, which is a poem, the Introduction to the work as a whole, and Chapter One, which covered the First Seal. Judging from this work we can estimate that the finished product would have run about 50-75 pages and might have taken him another two or three weeks.

David Koresh, in that last letter, asked that the completed manuscript be given to his lawyer, Dick DeGuerin, then passed on first to us. He had apparently come to trust our knowledge and integrity in discussing with him his interpretations of Revelation. He then authorized our release of copies to scholars, religious leaders, and the general public. Although David died a few days later, and was thus prevented from finishing this work, we still thought it best to release this portion which he did complete, following his instructions. Actually, his exposition of the First Seal was perhaps the most vital in understanding his sense of his own mission, the reasons for the Waco siege, and what ultimately transpired.

The text is produced here precisely as it came to us from the computer disks. In the interest of accuracy we have also carefully consulted Ruth Riddle, who typed it on the Sunday evening before the fire. For the sake of brevity she did not type all of David's verbal quotations of scripture -- planning to insert them later. We have put these citations in *italics*. On rare occasions, we have supplied punctuation and a missing word in [brackets].

David's last sentence is a suggestive one which urges readers and followers to be ready to "come out of our closet." He calls upon those of us on the outside to forsake our own personal dark closets and he summons the Branch Davidians to "come out" of Mt. Carmel and face the world as lovers of Christ. Chapter One concludes with two scriptural quotations which promise the reader that God will one day re-establish David's fallen community.

Dr. Phillip Arnold
Dr. James Tabor
Rosh Hashanah, 1993

EDEN TO EDEN

Search forth for the meaning here,
Hidden within these words
'Tis a song that's sung of fallen tears,
Given way for two love birds.

Love birds yet not of feathered creed
Shot down for gambled play,
And caged a far distance betweenst themselves
For the hunter felt it best that way.

"She bird is mine," the hunter said,
'Twas this bird I raised and faithfully fed."
'Twas he bird who released her from her cage,
Sought her womb in youthful age.

Love birds the name, these birds they call,
Two, plural, love bird, takes two.
'Twas not her womb of which he sought,
And certainly not her youth.

Love birds, the name these birds they call,
Two, plural, love bird, takes two,
It's just that he needed she,
To fly the skies of blue.

And now we see the hunter man,
Robbed without a prey,
The evil which he sought to do,
Caused the birds to pass away.

For loneliness and solitaire,
Is death to every soul.
For birds of God were meant to pair,
The two to complete the whole.

And now we see the final meaning
Of this rhyme and verse:
The pending judgment of the King
Who rules the universe.

For with Adam and his spirit Eve,
To share the kingdom fair;
But when they sinned they lost their crown
In exchange for shame to bear.

So Eve travailed and brought forth death,
And passed the crown to all;
For each to learn the lesson here,
The kingdom of the fall.

For virgins do not bring forth sons,
Until God does reverse,
The inner meaning of the law,
To remove man from the curse.

For in the Christ, we've seen a bride,
The water mixed with blood,
The wife with cloven tongues of fire,
Of whom the Christ has loved.

And now He's back to sing His song,
The life of every spring,
And love birds gather, each one with mate,
For the marriage of the King

INTRODUCTION
John 18:33-38

Then Pilate entered into the judgment hall again, and called Jesus, and said unto him, Art thou the King of the Jews? Jesus answered him, Sayest thou this thing of thyself, or did others tell it thee of me? Pilate answered, Am I a Jew? Thine own nation and chief priests have delivered thee unto me. What hast thou done? Jesus answered, My kingdom is not of this world; if my kingdom were of this world, then would my servants fight, that I should not be delivered to the Jews; but now is my kingdom not from here. Pilate therefore said unto him, Art thou a king, then? Jesus answered, Thou sayest that I am a king. To this end I was born, and for this cause came I into the world, that I should bear witness unto the truth. Everyone that is of the truth heareth my voice. Pilate saith unto him, What is truth? And when he had said this, he went out again unto the Jews, and saith unto them, I find in him no fault at all.

Strange indeed for the judgment of man, for who knows within himself that his judgment be true?

Scripture tells us that Pilate was convicted of the truth in Christ, but failing to take heed thereto, he lost his soul, causing the blood of the innocent to be shed. How many of us since the dawning of time have committed such things? Who was this Jesus? Who was this Saviour that nearly a whole religious nation rejected?

Matthew told us. Mark, Luke, and John all recorded their side of the story of which remains unto this day, read and judged of all. Likewise, the Acts, the Book of Romans, Corinthians, Ephesians, Galatians and such books open for our learning this most unique mystery of judgment and justice undone. But of all the records the most awe inspiring remains to be the most misunderstood, that being the Revelation of Jesus Christ written by the Apostle John to the churches of Asia and left on record that all who follow may ask the question:

"Who is this Christ and what remains to be the mystery of Him?"

In my work to unfold this mystery to you I will not use great techniques of scholarly display nor in-depth reasonings of philosophy, no sophisticated, congenial language shall be used, just simple talk and reason.

First of all, *"the Revelation of Jesus Christ which God gave unto Him to show unto His servants things which must shortly come to pass"* are to be seen just as that: a revelation of Jesus to reveal to men His wishes and His desires for those who make up His church. For the kingdom of God being that of heaven, and not of this world, is to be revealed unto this world by the means He has chosen --"the *foolishness of preaching."* John the Apostle while on the Isle of Patmos received the Lord's messenger and in obedience placed in written form all that he saw and all that he heard pertaining to the mysteries of Christ. And in good faith the Apostle stated, *"Blessed is he that readeth, and they that hear the words of this prophecy, and keep those things which are written therein for the time is at hand"* (Revelation 1:3).

Likewise John was commanded of the angel, *"Write the things which thou hast seen, and the things which are, and the things which shall be hereafter"* (Revelation 1:19). Simply, John's record contains the past, present, and future events that revolve around the Revelation of Jesus Christ. John in faithfulness sent his writings to the seven churches in Asia and the will of Christ for these churches is plainly revealed from chapter 2 to chapter 4 of Revelation. Therefore on record, all may read and see how Christ has dealt with His churches of old.

Our subject of interest will be taken up from chapters 4-22, for these passages entail the events that are to be after John's time. For it is written (Revelation 4: entire chapter):

After this I looked, and, behold, a door was opened in heaven: and the first voice which I heard was as it were of a trumpet talking with me; which said, Come up hither, and I will show thee things which must be hereafter. And immediately I was in the spirit; and, behold, a throne was set in heaven, and one sat on the throne. And he that sat was to look upon like a jasper and a sardine stone: and there was a rainbow round about the throne, in sight like unto an emerald. And round about the throne were four and twenty seats: and upon the seats I saw four and twenty elders sitting, clothed in white raiment; and they had on their heads crowns of gold. And out of the throne proceeded lightnings and thunderings and voices: and there were seven lamps of fire burning before the throne, which are the seven Spirits of God. And before the throne there was a sea of glass like unto crystal: and in the midst of the throne, and round about the throne, were four beasts full of eyes before and behind. And the first beast was like a lion, and the second beast like a calf, and the third beast had a face as a man, and the fourth beast was like a flying eagle. And the four beasts had each of them six wings about him; and they were full of eyes within: and they rest not day and night, saying, Holy, holy, holy, Lord God Almighty, which was, and is, and is to come. And when those beasts give glory and honour and thanks to him that sat on the throne, who liveth for ever and ever, the four and twenty elders fall down before him that sat on the throne, and worship him that liveth for ever and ever, and cast their crowns before the throne, saying, Thou art worthy, O Lord, to receive glory and honour and power: for thou hast created all things, and for thy pleasure they are and were created.

John states that *"that which must be hereafter"*--sometime after his day there will be a God who sits on His throne. There will be a jury of twenty-four elders. God will be declared as *"worthy to receive glory and honour and power,"* because unto Him and for Him all things were created.

John continues to say (Revelation 5: entire chapter):

And I saw in the right hand of him that sat on the throne a book written within and on the backside, sealed with seven seals. And I saw a strong angel proclaiming with a loud voice, Who is worthy to open the book, and to loose the seals thereof? And no man in heaven, nor in earth, neither under the earth, was able to open the book, neither to look thereon. And I wept much, because no man was found worthy to open and to read the book, neither to look thereon. And one of the elders saith unto me, Weep not: behold, the Lion of the tribe of Juda, the Root of David, hath prevailed to open the book, and to loose the seven seals thereof. And I beheld, and, lo, in the midst of the throne and of the four beasts, and in the midst of the elders, stood a Lamb

as it had been slain, having seven horns and seven eyes, which are the seven Spirits of God sent forth into all the earth. And he came and took the book out of the right hand of him that sat upon the throne. And when he had taken the book, the four beasts and four and twenty elders fell down before the Lamb, having every one of them harps, and golden vials full of odours, which are the prayers of saints. And they sung a new song, saying, Thou art worthy to take the book, and to open the seals thereof: for thou wast slain, and hast redeemed us to God by thy blood out of every kindred, and tongue, and people, and nation; and hast made us unto our God kings and priests: and we shall reign on the earth. And I beheld, and I heard the voice of many angels round about the throne and the beasts and the elders: and the number of them was ten thousand times ten thousand, and thousands of thousands; saying with a loud voice, Worthy is the Lamb that was slain to receive power, and riches, and wisdom, and strength, and honour, and glory, and blessing. And every creature which is in heaven, and on the earth, and under the earth, and such as are in the sea, and all that are in them, heard I saying, Blessing, and honour, and glory, and power, be unto him that sitteth upon the throne, and unto the Lamb for ever and ever. And the four beasts said, Amen. And the four and twenty elders fell down and worshipped him that liveth for ever and ever.

Very clearly John tells of a judgment in which only one question is asked, *"Who is worthy"* to open or to reveal a book found in the right hand of God clearly sealed with seven seals. John states, *"No man in heaven nor in earth, neither under the earth was able to open the book neither to look thereon."* Then John is pointed to the hope of all men: the Lamb that was slain. Here is a revelation of Christ as our High Priest in heaven. Here His work is revealed: the opening of the mysteries of God. These mysteries of which reveal Christ and His sufficiency to save all whose prayers are directed to God through Him. Likewise Paul the Apostle has stated:

So also Christ glorified not himself to be made an high priest; but he that said unto him, Thou art my Son, to day have I begotten thee.

For the law made nothing perfect, but the bringing in of a better hope did; by the which we draw nigh unto God...But this man, because he continueth ever, hath an unchangeable priesthood. Wherefore he is able also to save them to the uttermost that come unto God by him, seeing he ever liveth to make intercession for them.

But now hath he obtained a more excellent ministry, by how much also he is the mediator of a better covenant, which was established upon better promises.

For Christ is not entered into the holy places made with hands, which are the figures of the true; but into heaven itself, now to appear in the presence of God for us:

But this man, after he had offered one sacrifice for sins for ever, sat down on the right hand of God; From henceforth expecting till his enemies be made his footstool. For by one offering he hath perfected for ever them that are sanctified.

For if we sin willfully after that we have received the knowledge of the truth, there remaineth no more sacrifice for sins,

Of how much sorer punishment, suppose ye, shall he be thought worthy, who hath trodden under foot the Son of God, and hath counted the blood of the covenant, wherewith he was sanctified, an unholy thing, and hath done despite unto the Spirit of grace?

For ye are not come unto the mount that might be touched, and that burned with fire, nor unto blackness, and darkness, and tempest, And the sound of a trumpet, and the voice of words; which voice they that heard entreated that the word should not be spoken to them any more: (For they could not endure that which was commanded, And if so much as a beast touch the mountain, it shall be stoned, or thrust through with a dart: And so terrible was the sight, that Moses said, I exceedingly fear and quake:) But ye are come unto mount Sion, and unto the city of the living God, the heavenly Jerusalem, and to an innumerable company of angels, To the general assembly and church of the firstborn, which are written in heaven, and to God the Judge of all, and to the spirits of just men made perfect, And to Jesus the mediator of the new covenant, and to the blood of sprinkling, that speaketh better things than that of Abel. See that ye refuse not him that speaketh. For if they escaped not who refused him that spake on earth, much more shall not we escape, if we turn away from him that speaketh from heaven: Hebrews 5:5; 7:19,24-25; 8:6; 9:24; 10:12-14,26,29; 12:18-25.

Clearly then, John is showing us of that very event of which Paul the Apostle so clearly writes. Christ is the mediator of the New Covenant and that New Covenant is contained in the seven seals. If we the church have been so long awaiting that which must be hereafter, why is it that so many of us in Christendom have not even heard of the seven seals?

Why is this Revelation of Jesus Christ which God gave to Him such a mystery? The Apostle Peter gives us a clue when he said (1 Peter 1:3-5):

Blessed be the God and Father of our Lord Jesus Christ, who, according to his abundant mercy, hath begotten us again unto a living hope by the resurrection of Jesus Christ from the dead to an inheritance incorruptible, and undefiled, and that fadeth not away, reserved in heaven for you, who are kept by the power of God through faith unto salvation ready to be revealed in the last time.

Truly Christ is our only Saviour, our only Mediator between man and God. Likewise, it is true the opening of the seven seals by Christ is as much or more so important for our salvation as any other former gospels. If this salvation is *"ready to be revealed in the last time,"* as Peter says, then we should hear another statement from the Apostle Peter (1 Peter 1:13):

Wherefore, gird up the loins of your mind, be sober, and hope to the end for the grace that is to be brought unto you at the revelation of Jesus Christ

So the question remains--What are the seven seals? And the answer remains--a Revelation of Jesus Christ which God gave unto Him to show unto His servants things which must shortly come to pass. If these things were to have shortly come to pass then surely they must have

already been fulfilled, and if so, does that mean we are His servants if we know these things not? Or could it be that the things which must be hereafter pertaining to God's throne, the judgment, the book, and the Lamb receiving that book are events directed primarily to the last times or the last days? If that's the case are we in the last days? If so then it must be time for God's servants to know these things (Psalms 90:12-17; 91:1-4; 11:3-4).

So teach us to number our days, that we may apply our hearts unto wisdom. Return, O LORD, how long? and let it repent thee concerning thy servants. O satisfy us early with thy mercy; that we may rejoice and be glad all our days. Make us glad according to the days wherein thou hast afflicted us, and the years wherein we have seen evil. Let thy work appear unto thy servants, and thy glory unto their children. And let the beauty of the LORD our God be upon us: and establish thou the work of our hands upon us; yea, the work of our hands establish thou it.

He that dwelleth in the secret place of the most High shall abide under the shadow of the Almighty. I will say of the LORD, He is my refuge and my fortress: my God; in him will I trust. Surely he shall deliver thee from the snare of the fowler, and from the noisome pestilence. He shall cover thee with his feathers, and under his wings shalt thou trust: his truth shall be thy shield and buckler.

If the foundations be destroyed, what can the righteous do? The LORD is in his holy temple, the LORD'S throne is in heaven: his eyes behold, his eyelids try, the children of men.

The servant of God will find as we continue in our searching of the scriptures that every book of the Bible meets and ends in the book of Revelation. Gems of most sacred truth are to be uncovered, golden promises never before seen are to be brought to view, for when has grace ever been needed more than now in the time of which we live?

CHAPTER 1
THE FIRST SEAL

Although we, the servants of God, do not live in Asia, we are none the less to be beneficiaries of their counsels; and they likewise, not being alive today are no doubt to be a part of the grace which we are to receive.

Revelation 6:1-2. *And I saw when the Lamb opened one of the seals, and I heard, as it were the noise of thunder, one of the four beasts saying, Come and see. And I saw, and behold a white horse: and he that sat on him had a bow; and a crown was given unto him: and he went forth conquering, and to conquer.*

Here in our Heavenly Zion we see the Lamb loose the first seal. This preview of God's revelation of His Son is to be of our utmost interest, for not only will it more clearly reveal the nature of Christ, but it will likewise unfold more clearly the Divine nature of God who is the Author of this revelation.

Now let's turn to Psalms 45:

My heart is inditing a good matter: I speak of the things which I have made touching the king: my tongue is the pen of a ready writer. Thou art fairer than the children of men: grace is poured into thy lips: therefore God hath blessed thee for ever. Gird thy sword upon thy thigh, O most mighty, with thy glory and thy majesty. And in thy majesty ride prosperously because of truth and meekness and righteousness; and thy right hand shall teach thee terrible things. Thine arrows are sharp in the heart of the king's enemies; whereby the people fall under thee. Thy throne, O God, is for ever and ever: the sceptre of thy kingdom is a right sceptre. Thou lovest righteousness, and hatest wickedness: therefore God, thy God, hath anointed thee with the oil of gladness above thy fellows. All thy garments smell of myrrh, and aloes, and cassia, out of the ivory palaces, whereby they have made thee glad. Kings' daughters were among thy honourable women: upon thy right hand did stand the queen in gold of Ophir. Hearken, O daughter, and consider, and incline thine ear; forget also thine own people, and thy father's house; So shall the king greatly desire thy beauty: for he is thy Lord; and worship thou him. And the daughter of Tyre shall be there with a gift; even the rich among the people shall entreat thy favour. The king's daughter is all glorious within: her clothing is of wrought gold. She shall be brought unto the king in raiment of needlework: the virgins her companions that follow her shall be brought unto thee. With gladness and rejoicing shall they be brought: they shall enter into the king's palace. Instead of thy fathers shall be thy children, whom thou mayest make princes in all the earth. I will make thy name to be remembered in all generations: therefore shall the people praise thee for ever and ever.

Verse 1: *"My* (God's) *heart is inditing a good matter: I* (God) *speak of the things which I* (the Creator of all things) *have made touching the King* (Christ), *my* (God's) *tongue is the pen of a ready writer."* Here we see God not only creates all things by His Word but in His

wisdom, He has chosen some things to be written that by the power of His word He may bring to pass in His own time. Here we see God by His written Word foretelling his determined purpose for His Son, Christ.

Verse 2: *"Thou art fairer than the children of men, grace is poured into thy lips; therefore God hath blessed thee forever, Gird thy sword upon thy thigh, O most mighty, with thy glory and thy majesty. And in thy majesty ride prosperously because of truth and meekness and righteousness; and thy right hand shall teach thee terrible things."* Clearly in the Revelation Christ is fairer than the fairest. Those who receive the seals receive the grace found therein. Christ is capable of destroying his enemies for His majesty truly is great in heaven, for it is witnessed that all angels bow before him. What is it that Christ shall ride but the white horse because the book given to Him is the truth and He shall ride prosperously.

Verse 5: *"Thine arrows are sharp in the heart of the king's enemies whereby the people fall under thee."* Here we see the meaning of the bow of which the first seal speaks. Let us pray that none of us refuse *"Him that speaks from heaven"* and the Spirit of Truth that is now speaking from heaven for it is likewise written in verse 6:

"Thy throne O God, is for ever and ever; the scepter of thy kingdom is a right scepter. Thou lovest righteousness, and hatest wickedness: therefore God (Christ), *thy God* (Father), *hath anointed thee with the oil of gladness above thy fellows. All thy garments smell of myrrh, and aloes, and cassia, out of the ivory palaces, whereby they have made thee glad. Kings's daughters were among thy honourable women: upon thy right hand did stand the queen in gold of Ophir, Hearken, O daughter, and consider, and incline thine ear; forget also thine own people, thy father's house; so shall the King* (Christ) *greatly desire thy beauty; for he is thy Lord; and worship thou him."*

How can any man deny that the first seal is a preview into the event spoken of by the 45th Psalm? How important is this insight? How important is it to God, or to Christ, or to the church? While on earth Christ spoke many parables regarding His kingdom and his bride. Let's hear one and see if we cannot more clearly understand the importance of these things. Matthew 22:1-14:

And Jesus answered and spake unto them again by parables, and said, the kingdom of heaven is like unto a certain king, which made a marriage for his son, and sent forth his servants to call them that were bidden to the wedding: and they would not come. Again, he sent forth other servants, saying, Tell them which are bidden, Behold, I have prepared my dinner: my oxen and my fatlings are killed, and all things are ready: come unto the marriage. But they made light of it, and went their ways, one to his farm, another to his merchandise: and the remnant took his servants, and entreated them spitefully, and slew them. But when the king heard thereof, he was wroth: and he sent forth his armies, and destroyed those murderers, and burned up their city. Then saith he to his servants, The wedding is ready, but they which were bidden were not worthy. Go ye therefore into the highways, and as many as ye shall find, bid to the marriage. So those servants went out into the highways, and gathered together all as many as they found, both bad and good: and the wedding was furnished with guests. And when the king came in to

see the guests, he saw there a man which had not on a wedding garment: and he saith unto him, Friend, how camest thou in hither not having a wedding garment? And he was speechless. Then said the king to the servants, Bind him hand and foot, and take him away, and cast him into outer darkness; there shall be weeping and gnashing of teeth. For many are called, but few are chosen.

Notice that in this parable of Matthew, Christ clearly teaches that those with indifferent attitudes who would not come to the Marriage Supper were to be slain. Their disinterest offended the King who we know is God. So, likewise, today if we disregard the truth of the first seal we really disregard Christ, who opened it and in so doing we disregard God who gave it. This indifference most surely will place one's salvation in jeopardy.

Matthew 21:42:

Jesus saith unto them, Did ye never read in the scriptures, The stone which the builders rejected, the same is become the head of the corner; this is the Lord's doing, and it is marvelous in our eyes?

In this passage we see Christ pointing his hearers to the Rock (His God). We know in Revelation 4 God is pictured as one who appears to be as jasper and sardine stone. This one is the same stone to which Christ referred to. So again we are reminded that what the Father gives to Christ is a revelation of Jesus Christ that God gives to Him to show unto his servants.

Was it really David who wrote the Psalms or was it God who spoke through David? Was it really the prophets who wrote their books or was it God who spoke through the prophets? If it was God, we must conclude God claims the book as His and we should more earnestly take it as God's Word.

We find now in Revelation 19 a verification of the events we have just read.

Revelation 19:1-13.

And after these things I heard a great voice of much people in heaven, saying, Alleluia; Salvation, and glory, and honour, and power, unto the Lord our God: for true and righteous are his judgments: for he hath judged the great whore, which did corrupt the earth with her fornication, and hath avenged the blood of his servants at her hand. And again they said, Alleluia. And her smoke rose up for ever and ever. And the four and twenty elders and the four beasts fell down and worshipped God that sat on the throne, saying, Amen; Alleluia. And a voice came out of the throne, saying, Praise our God, all ye his servants, and ye that fear him, both small and great. And I heard as it were the voice of a great multitude, and as the voice of many waters, and as the voice of mighty thunderings, saying, Alleluia: for the Lord God omnipotent reigneth. Let us be glad and rejoice, and give honour to him: for the marriage of the Lamb is come, and his wife hath made herself ready. And to her was granted that she should be arrayed in fine linen, clean and white: for the fine linen is the righteousness of saints. And he saith unto me, Write, Blessed are they which are called unto the marriage supper of the Lamb.

And he saith unto me, These are the true sayings of God. And I fell at his feet to worship him. And he said unto me, See thou do it not: I am thy fellowservant, and of thy brethren that have the testimony of Jesus: worship God: for the testimony of Jesus is the spirit of prophecy. And I saw heaven opened, and behold a white horse; and he that sat upon him was called Faithful and True, and in righteousness he doth judge and make war. His eyes were as a flame of fire, and on his head were many crowns; and he had a name written, that no man knew, but he himself. And he was clothed with a vesture dipped in blood: and his name is called The Word of God.

Notice how in verse 9 it says, *"Blessed are they which are called unto the marriage supper of the Lamb!"* And he said unto me, *"These are the true saying of God!"* Being the true saying of God, the first seal of Revelation 6:1-2 must be true according to the saying of God in Psalms 45. And how can we be *blessed* if we know nothing about the *Marriage Supper of the Lamb* nor what it entails?

Isaiah 33:17:

Thine eyes shall see the king in his beauty; they shall behold the land that is very far off.

Are we starting to see the King a little more clearly? And how about that heavenly land very far off?

Isaiah 55:3-4:

Incline your ear, and come unto me; hear, and your soul shall live, and I will make an everlasting covenant with you, even the sure mercies of David. Behold, I have given him for a witness to the people, a leader and commander to the people.

Has not David truly witnessed on behalf of God by God's own power this beautiful marriage of which all are called to receive the knowledge of.

Isaiah 61:8-10:

For I the LORD love judgment, I hate robbery for burnt offering; and I will direct their work in truth, and I will make an everlasting covenant with them. And their seed shall be known among the Gentiles, and their offspring among the people: all that see them shall acknowledge them, that they are the seed which the LORD hath blessed. I will greatly rejoice in the LORD, my soul shall be joyful in my God; for he hath clothed me with the garments of salvation, he hath covered me with the robe of righteousness, as a bridegroom decketh himself with ornaments, and as a bride adorneth herself with her jewels.

We should surely at this moment realize the importance of learning more thoroughly the meaning of Christ according to the seals lest we be found without *"the wedding garment"* of God's judgment, for if we receive this enlightenment, this grace which comes from heaven, we

shall surely be partakers of *the marriage of the Lamb* for we are the guests who will *"Hearken and consider."*

Jeremiah 23:5,6,7,8,18,19,20:

Behold, the days come, saith the LORD, that I will raise unto David a righteous Branch, and a King shall reign and prosper, and shall execute judgment and justice in the earth. In his days Judah shall be saved, and Israel shall dwell safely: and this is his name whereby he shall be called, THE LORD OUR RIGHTEOUSNESS. Therefore, behold, the days come, saith the LORD, that they shall no more say, The LORD liveth, which brought up the children of Israel out of the land of Egypt; but, The LORD liveth, which brought up and which led the seed of the house of Israel out of the north country, and from all countries whither I had driven them; and they shall dwell in their own land...For who hath stood in the counsel of the LORD, and hath perceived and heard his word? who hath marked his word, and heard it? Behold, a whirlwind of the LORD is gone forth in fury, even a grievous whirlwind: it shall fall grievously upon the head of the wicked. The anger of the LORD shall not return, until he have executed, and till he have performed the thoughts of his heart: in the latter days ye shall consider it perfectly.

This beautiful prophecy, the Desire of Ages, entails of Christ the Lord our Righteousness and also warns us of the latter days should we be found not standing in the counsel of the Lord. If we, the church of God, stand in the counsel of Christ, especially in the light of the seven seals, shall we not be a part of that beautiful bride spoken of in Jeremiah 33?

Jeremiah 33:14-16:

Behold, the days come, saith the LORD, that I will perform that good thing which I have promised unto the house of Israel and to the house of Judah. In those days, and at that time, will I cause the Branch of righteousness to grow up unto David; and he shall execute judgment and righteousness in the land. In those days shall Judah be saved, and Jerusalem shall dwell safely; and this is the name of which she shall be called, THE LORD, OUR RIGHTEOUSNESS.

She, the city, she, the saints, those who are clothed with the righteousness of Christ and His Word, for it is also promised in verse 17, *"David shall never want a man to sit upon the throne of the house of Israel."* For Christ remains a King *"forever."* (Psalm 45:6)

Ezekiel 37:24-25 Daniel 12:1:

And David my servant shall be king over them; and they all shall have one shepherd: they shall also walk in my judgments, and observe my statutes, and do them. And they shall dwell in the land that I have given unto Jacob my servant, wherein your fathers have dwelt; and they shall dwell therein, even they, and their children, and their children's children for ever: and my servant David shall be their prince for ever.

And at that time shall Michael stand up, the great prince which standeth for the children of thy people: and there shall be a time of trouble, such as never was since there was a nation even to that same time: and at that time thy people shall be delivered, every one that shall be found written in the book.

If we are to be found written in the book, surely we should be found in the first seal for where Christ is revealed, shall not we also be revealed as one who *"hearkens and considers"* for is not He *"our Lord"* and shall not we *"worship"* him *"in spirit and in truth"* (John 4:24).

In Hosea 2:14 we read, *"Therefore, behold I will allure her and bring her into the wilderness, and speak tenderly unto her."* The Christian Church being scattered from Jerusalem went throughout all nations. Being amongst the Gentiles, the gospel was to impart unto the Gentiles the riches of God's mercy.

Verse 15: *"And I will give her her vineyards from thence, and the Valley of Achor for a door of hope; and she shall sing there, as in the days of her youth, and as in the day when she came up out of the land of Egypt."* Here it is promised that once the unfaithful ones as Achan are taken from amongst God's people we will definitely have a deliverance as all the prophets agree.

Verse 16: *And it shall be at that day, saith the LORD, that thou shalt call me Ishi, and shalt call me no more Baali.* If we are to call God by such an endearing term, we are to know Him a little better and what better [way] to know him than in the revelation of Jesus Christ.

Verse 17: *For I will take away the names of Baalim out of her mouth, and they shall no more be remembered by their name.* All false teachers and false prophets are to be forgotten for there is one God, and one Lamb and one seven seal truth.

Verse 18: *And in that day will I make a covenant for them with the beasts of the field, and with the fowls of the heavens, and with the creeping things of the ground; and I will break the bow and the sword and the battle out of the earth, and will make them to lie down safely.* Just as Isaiah 11 has promised, so Hosea also promises, peace for those who are called to the Marriage Supper of the Lamb.

Verses 19 and 20: *And I will betroth thee unto me forever; yea, I will betroth thee unto me in righteousness, and in judgment, and in loving-kindness, and in mercies. I will even betroth thee unto me in faithfulness; and thou shalt know the LORD.* So again, here we see the importance of this opportunity of learning these seven seals and the complete entailment of what that includes.

Verse 21: *And it shall come to pass in that day, I will hear, saith the LORD, I will hear the heavens, and they shall hear the earth.* Are we not a part of this event by faith? Is not heaven in total unity to the receiving of these seals from God? Is not God's word supreme in heaven? And it being the Word which reveals Christ now is the time like never before to pray that we may be worthy to understand these things more clearly.

Verse 22 and 23: *And the earth shall hear the corn and the wine, and the oil; and they shall hear Jezreel. And I will sow her unto me in the earth; and I will have mercy upon her that had not obtained mercy; and I will say to them who were not my people, Thou art my people; and they shall say, Thou art my God.* We will not go at this point into the in depth meaning of the book of Hosea in every particular for our primary subject at this point is the first seal and the Marriage is that subject. This should inspire us to look into the meaning of Hosea 3:5: *"Afterward shall the children of Israel return, and seek the LORD, their God, and David, their king, and shall fear the LORD and his goodness in the latter days".*

Joel 2:15,16: *Blow the trumpet in Zion, sanctify a fast, call a solemn assembly. Gather the people, sanctify the congregation, assemble the elders, gather the children, and those that nurse at the breasts; let the bridegroom go forth from his chamber, and the bride out of her closet.* Yes, the bride is definitely to be revealed for we know that Christ is in the Heavenly Sanctuary anticipating His Marriage of which God has spoken. Should we not eagerly ourselves be ready to accept this truth and come out of our closet and be revealed to the world as those who love Christ in truth and in righteousness.

Amos 9:11,14,15: *In that day will I raise up the tabernacle of David that is fallen, and close up the breaches of it; and I will raise up his ruins, and I will build it as in the days of old ... And I will bring again the captivity of my people of Israel, and they shall build the waste cities, and inhabit them; and they shall plant vineyeards, and drink their wine; they shall also make gardens, and eat the fruit of them. And I will plant them upon their land, and they shall no more be pulled up out of their land which I have given them, saith the LORD, thy God.*

Obadiah 21: *And saviors shall come up on Mount Zion to judge the mount of Eaau; and the kingdom shall be the LORD's.*

COMMENTS AND CLARIFICATIONS

Drs. James D. Tabor and J. Phillip Arnold

David Koresh asked that his completed manuscript be given to us through his lawyer, Dick DeGuerin. Evidently he expected that we would read it with sensitivity and offer some reaction and evaluation based on our academic study of Biblical texts and our knowledge of the history of the interpretation of the Book of Revelation. The following preliminary comments will help the reader who is not technically trained in these esoteric texts to follow David's rather involved thinking and interpretation. Whatever one thinks of the Branch Davidians and their Biblical views, one can at least endeavor to understand their systematic interpretation of Scripture which they obviously found so compelling.

The key to understanding David Koresh and his perception of his identity and mission clearly centers on one question taken from the book of Revelation--"Who is worthy to open the scroll and to loose its seals?" (Revelation 5:2). The text identifies a figure known as the Lamb, or "Root [Branch] of David" who alone is able to open this mysterious book sealed with Seven Seals (5:5). Traditional Christianity has, of course, always understood this one to be none other than Jesus Christ of Nazareth. Hence the endless confusion as to whether or not David Koresh actually claimed to be "Jesus," or even God himself, for that matter. This manuscript makes it clear that he claimed to be neither, despite all the confused and misleading reports about his self-understanding. However, he certainly *did* claim to be this Lamb who opens the sealed scroll, as well as the figure who rides the White Horse when the First Seal is opened, and appears at the end of the book, still mounted on the same White Horse, when the "marriage of the Lamb" takes place (Rev 6:1-2; 19:7-19).

Part of the confusion has to do with the use of the term "Christ." This Greek word is not a name, but a title It means "an anointed one" or to use the original Hebrew word, a "messiah." All the ancient high priests and kings of Israel were "anointed," and in that sense can be called "christ" or "messiah." This is standard Biblical usage. However, the Prophets began to focus on a specific and ideal Christ or Messiah who is to come. This one was to be a "Branch of David," that is, a descendant of King David, and would rule as a King in Jerusalem, bringing peace to Israel and all nations (Isaiah 11:1; Jeremiah 23:5). This Christ, like David of old, is also called the "Son of God" (Psalm 2:6; 2 Samuel 7:14). David Koresh clearly believed that Jesus of Nazareth was this Christ. However, he also maintained that the prophets foretold of another "Christ," a Branch of David, who would appear at the end of time and open the Seven Seals.

Psalm 45 is the key to the First Seal, according to David. Here the King is anointed, that is made "Christ," and rides his horse triumphantly (verses 1-7). This is parallel to Revelation 6:1-2 and 19:7-19--so this figure is none other than the Lamb. After conquering his enemies, the marriage feast takes place. This Lamb marries virgin "daughters" and has many children who are destined to rule with him over the earth (Psalm 45:10-17). Jesus of Nazareth, though anointed as Christ, never fulfilled this role 2000 years ago. Accordingly, David believed that Psalm 45, along with several other key Messianic texts, could not apply to this appearance of Jesus Christ of the first century. Jesus never married and had children, as this text requires. Psalm 40 also speaks of the same figure: "Then said I, Lo, I come; in the *scroll of the book* it is written of me, I delight to

do thy will, O my God, yea thy law is within my heart" (verses 6-7). The text goes on to speak of this one as having "iniquities more than the hairs of mine head" (verse 12). This so-called *"sinful messiah"* is none the less the one written of in the scroll--which David connected, obviously, to the Seven Sealed Scroll of Revelation 6.

David believed that this same figure is mentioned in Isaiah 45:1 and called by name: "Thus says the LORD, to his *anointed* (christ), to Cyrus (Koresh in Hebrew), whose right hand I have held, to subdue nations before him ..." This Cyrus, or Koresh, is called Christ. His mission is to destroy Babylon. Historians have understood the reference to be to the ancient Persian King Cyrus, who literally destroyed ancient Babylon. But there is a deeper spiritual and prophetic meaning according to David, and for that matter, the book of Revelation. The whole religious-political system is called "mystery Babylon the Great." As the text says, "Babylon is fallen, is fallen," hinting at a *double* meaning and fulfillment (Rev 18:2). The last Babylon is defeated by the last Christ/King/Koresh, the "Branch of David."

In his manuscript David barely begins to get into the many texts of the Prophets who speak of this "Davidian" figure (Jeremiah 23:5-8; 19-20; 33:14-16; Ezekiel 37:24-25; Hosea 3:5). He makes the point repeatedly that this Christ comes in the *latter* times, and perceives that Jesus of Nazareth, who came 2000 years ago, never fulfilled these texts. The Lamb who opens the Seals comes right before the End, is humiliated and maligned, and like Jesus 2000 years ago, offers the world God's truth. In other words, David is regarded as the actual, final manifestation of the Lamb, who will fulfill these prophecies regarding the Messiah.

According to this perspective, the Waco standoff and "waiting period" was a test for all humanity. It did not have to end as it did. David believed that the world was being offered a chance to listen to this last Christ/Koresh, who could open the Seals, and thus show the way of repentance to our society. There was even an opportunity given for the actual decoding of the Seven Seals in written form, to be openly shared with all who wanted to hear. This was all cut short. The rejection and death of David, at age 33, around Passover time, became a strange repetition of the past. The Fifth Seal, which allowed for a time of repentance while the message went forth, ended with the "rest killed" as they believed Rev 6:11 predicted. The Branch Davidians now believe that the probation period is up, and the Sixth Seal of the Judgment of God is pending.

The manuscript indicates that those who respond to the message of repentance, who turn to God and begin following the Law of God, through accepting the Lamb / Koresh / Christ / King, will be invited to the "Marriage" feast. They are those "elect" ones who make up the Bride of the Lamb. He concludes this chapter with the thought that those who are truly part of the "Bride" are to come out of the "closet" and be revealed for who they are.

The manuscript also carefully maintains the distinction between the God the Father and His Lamb or Messiah. In that sense David Koresh never claimed to be God. However, like the Hebrew Prophets of old, and like Jesus of Nazareth, he did claim to speak the words of Yahweh God (the Father) directly, and in that sense could use, as they did, the first person mode of discourse.

The Poem, entitled "Eden to Eden," is quite fascinating. Like Paul, David implies that the "marriage of the Lamb" is a mystery which somehow rectifies what happened at Eden in the Fall (Ephesians 5:31-32). The physical sexual union ("the two shall become one flesh") has a deeper meaning, and involves the perfect bonding of "Adam and his spirit Eve" in the "new Man" to come. David taught the importance of the feminine side of the Divine and implies that Adam was created to express this dual image. However, through sin, Adam and his descendants were separated from the spiritual, feminine side, and remain in need of restoration. Through the revelation of Christ in the person of the Lamb, people are being reunited with their fragmented selves and gathered as lovers of God for the ultimate marriage union which will restore Eden.

DAVID'S PROMISE TO "COME OUT" AND THE EVIDENCE OF THE MANUSCRIPT

What evidence is there from the manuscript that David Koresh would have kept his pledge to "come out" of Mt Carmel, as he stated in his letter to his attorney, Dick DeGuerin on April 14th? We know that the first chapter of this work was completed on Sunday evening, the night before the fire, and was typed onto a computer disk by Ruth Riddle. This disk survived the fire, carried out by Ruth Riddle in her jacket pocket.

The existence of the manuscript itself, as well as internal evidence within the text, confirm that David was keeping his promise to produce an interpretive document. Such evidence also supports the view that David actually intended to lead his group out peacefully. A literary analysis of the text clearly shows that David was not merely "pretending" to write on the seals, and that his pledge of April 14 was not a con or sham.

An analysis of this newly-released manuscript offers three reasons to conclude that David genuinely planned to compose a full written interpretation of the Seven Seals and that he intended, upon completion, to make this work available to the public.

First, the form and structure of the manuscript indicate that David's efforts were genuine, purposeful, and tangibly productive. After conceptualizing the project over that last weekend, David dictated to his typist on Sunday evening, April 18, in one long sitting of approximately four hours. The text consists of about twenty-five double-spaced pages of coherent and organized exegesis and commentary on biblical passages. Using both deductive and inductive logic, David presents his interpretation of biblical prophecy. Although his interpretation is unique in its specific application and reference, it is similar in method and style to other well known exegetes such as Isaac Newton, Joseph Smith, Ellen G. White, J.N. Darby, C. I. Schofield, or Hal Lindsey.

The structure of the manuscript is well planned and suggests that the author took pains to organize it in such a way that it would be well-received as a readable exposition. For example, the work begins with a preface consisting of a poem written by David. The poem is entitled EDEN TO EDEN and contains fifty-two lines divided into thirteen stanzas of four lines of metered and rhyming verses.

Further evidence of a careful hand at work appears in the section which follows the Poem. David entitles this section the "Introduction." It sets forth the hermeneutical principles and general themes which follow in the main body of the work. Following this Introduction the author begins "Chapter One," in which he turns his attention to the meaning of Seal One.

Chapter One is subdivided into major headings which consist of specific passages from the Bible. David comments on each of these biblical chapters and creatively associated them with the First Seal found in the Book of Revelation. In this way he combines insights from the Old Testament and the New Testament using traditional Rabbinic and Christian exegetical techniques. He closes with a clarion call for his readers to consider his presentation and decide for themselves if it is true. The Chapter ends with two biblical quotations, offering a sense of closure in regards to the First Seal and expectancy regarding Chapter Two on the Second Seal, which would have been dictated at the next sitting--probably on the very day of the fire.

The second indication within the manuscript that validates David's pledge to exit Mt. Carmel concerns the intended audience to whom it is written. Throughout the work David carefully directs his words to those on the outside of Mt. Carmel, assuming an audience who would not know the meaning of the Seven Seals. The writer's vocabulary, his style, and approach show that he expects that his words will be read by non-believers outside Mt. Carmel. It is evident that David attempts to persuade his hearers. The implied audience is non-Davidian. The writing and the delivery of the manuscript to the world would grant outsiders an opportunity to hear the message. Once the seals were delivered to the world, the need to remain in Mt. Carmel would be gone.

Finally, specific statements in the text support David's pledge to *"come out."* Ironically, the very last words we have from David in this manuscript read: "Should we not eagerly ourselves be ready to accept this truth and *come out* of our closet and be revealed to the world as those who love Christ in truth and in righteousness?" David not only expects some readers to accept his teaching, but he also prepares his followers inside Mt. Carmel to *"come out"* of the center. This is seen further in his reference to Joel 2:15,16, which is quoted immediately before his call to exit. This passage orders those in Zion (read: Mt. Carmel) to "gather the people ... assemble the elders ... gather the children" and infants and follow the bridegroom (read: David), "from his chamber and the bride out of her closet." The Davidians understood other passages from Isaiah to refer to their refuge at Mt. Carmel as a "chamber" where they could wait for God's intervention. This use of the term *"come out,"* drawn from Scripture, used in David's April 14th letter, and now appearing in the manuscript, clearly indicates what was on his mind.

Evidence from the manuscript indicates that David was in the process of fulfilling his pledge to "come out" and surrender to authorities, as he had come to believe God commanded. The waiting period inside Mt. Carmel had been necessary, he believed, because it caused the sinful world to focus its attention on the Biblical message of the seven seals. Had the world waited for David to finish writing the seals, it would have appeared to him worthy of mercy. He would hae considered his mission to bring his message to the world accomplished. David then would have been in position to leave Mt. Carmel as he pledged in his letter of April 14th.

Mr. JAMAR. All they had to do was say, "We've got a disk. We're going to be sending it out."

Mr. ZELIFF. I guess the problem that's driving me crazy—and I have great respect for all of you, I really do, and I have been a supporter of law enforcement. I will continue to have respect for it and especially the FBI, but the problem is, were you guys listening? I don't know.

Mr. JAMAR. We were listening. I've just recited to you what we went through.

Mr. ZELIFF. I understand.

Mr. JAMAR. I had not decided that. If I was that impulsive, why wouldn't I have done something in March? Why would I let Dick DeGuerin go in on March 29?

Mr. ZELIFF. Thank you very much.

Mr. SAGE. Excuse me, sir. Do we have time at all for me to comment?

Mr. ZELIFF. Yes, you do. Up to two people.

Mr. SAGE. Thank you very much.

I believe you made the statement, and if you didn't, I apologize, but I want to make sure that it's not left on the record that we did not take that offer seriously. We took it very seriously. But the point that's been made, hopefully, was that it was yet another in a series of what we perceived to be possibly and probably delay tactics.

You've introduced the transcript from the disk that did, in fact, come out with Ruth Riddle. I have some serious questions about that because, during part of the process where we did press Judy Schneider as far as what type of equipment she had, this is in response to her saying, at this rate, with manual, this could take me a year. Because she was angling for a laptop, which we considered and passed that forward. We did pass——

Mr. ZELIFF. You considered it and passed it forward. You gave her tape.

Mr. SAGE. We sent in tape immediately so they could use those laptops and also considered the possibility of sending in laptops—I mean, could use the manual and the possibility of sending in a laptop, explored it, considered it, didn't dismiss anything at hand.

During the course of that, she indicated to us that there were no other facilities available. The power by this time had been turned off for approximately 37 days. How in the world, if he was working on this from the 14th, how did they generate that disk? If the power had been off for 30-some days, how did they generate that disk?

I would—without just accepting it at face value, I would suggest there's a possibility that may have been previous work, what have you. It's also been reviewed. I wish I had a copy of the report. I don't think there's been a formal report generated, but we'll pursue that. And to the best of my knowledge, when it was reviewed by the Baylor School of Law—School of Religion, Baylor University, it was found, quote, not to be a scholarly work.

Mr. ZELIFF. Thank you, Mr. Sage.

Mr. Schumer for 5 minutes.

Mr. SCHUMER. OK. Thank you. I would just like to go over two points here.

First, again, what this all means to law enforcement; and, second, the question we are coming to, which I think is the $64,000 question, is could this have been done any better or any differently?

In terms of law enforcement, I guess until last night sitting through all these hearings, my view was probably not different than most Americans, which is I'm getting sick and tired of all the attacks on the ATF and the FBI. Sure, you guys may have fouled up and done a few things wrong, but you acted in good faith. You were trying to enforce the law. And we should give you the benefit of the doubt because of the person, David Koresh, you had to deal with.

And this morning, one after the next, my colleagues here have been saying, "I'm a good friend of law enforcement." And I believe them to be sincere in that.

But I would say that those who sort of take way-out and outlandish theories and use them sort of as a club to bang law enforcement over the head, their questioning and actions in the hearing don't follow those statements.

Now, this morning, I must say I've noticed a milder tone toward law enforcement, no talking about Darth Vader helmets and things like that, and I'm appreciative of that.

The second question I have is, could this have been done any differently? And we have to take that in the context of once ATF bungled its part of the operation, because already then you have a siege mentality—you will all admit they bungled it, particularly losing the element of surprise. To me, that's the worst thing that happened. And then the FBI came in, and you guys were there.

And Janet Reno says she searched her soul, and she couldn't have found a better way to do this, that all the alternatives were rotten, given the monster Koresh that we were dealing with.

My questions don't relate to the use of gas. I think that is on the verge of these conspiratorial theories. I think CS gas, it's been proven to my complete satisfaction, Dr. Salem, was probably the right thing to use, better than any alternative, including the alternative of waiting. Then you run into the problem that Koresh would do something on his own. No question about it.

My basic problem is not the use of the gas, but the thing I wonder about is the method with which the gas was administered. Because you're dealing with people under siege, you're dealing with Koresh, a madman. And you have these—I've seen the pictures. You have these huge vehicles—not the Bradley fighting vehicles, I'll leave that military conspiratorial theory to my friends who are worried about posse comitatus.

But these CEV's, these combat engineering vehicles, banging holes into this compound and going right up there to try and administer the gas—but the banging of the holes, which you state was necessary to allow the gas to blow through, is quite a frightening activity. And it seems to me it is not the type of activity designed to encourage people to come out. It seems it is not the kind of activity that is designed to create a view that we are not out to harm you.

And so I guess my question, and I'd aim this at both Mr. Jamar and Mr. Potts, is could you please explain why that method was

chosen, what the alternative methods might have been, and why my view, which I'm willing to admit—would like to admit, is wrong, that these vehicles were the best way to go.

And, again, I am terribly mindful of the fact that we have a lot of Thursday-morning quarterbacking going around, that everyone could say, "Oh, do it this way, do it that way" but you guys were under pressure, the Attorney General was under pressure, and any day Koresh could have lit up that compound on his own and then everyone would be yelling at you for waiting so long and not going in and rescuing those kids sooner. But that is my biggest concern about this.

And I would like to hear your answers, both, Mr. Potts first maybe and Mr. Jamar second.

Mr. POTTS. Congressman Schumer, the reason that the tanks were in in the first place is because—for safety of the agents. The only way——

Mr. SCHUMER. When you say tanks, you mean the CEV's, right?

Mr. POTTS. The CEV's.

Mr. SCHUMER. They look sort of like tanks.

Mr. POTTS. We first had Bradley vehicles there.

Mr. SCHUMER. Those were different. They weren't the ones that banged into the compound. But go ahead.

Mr. POTTS. The Bradley vehicles were for transportation of the people, and Koresh indicated that he could blow those 40 to 50 feet in the air. We went out and we got CEV's and also some Abrams tanks. We had the gun barrels intentionally removed from those tanks and told Koresh these were not offensive weapons. We were not bringing in tanks to attack his compound. They were defensive, just simply to protect our agents.

Those same that delivered the gas, we'd also used Bradleys and those same protective vehicles to deliver milk and other things to the compound. I realize there's a significant difference there, but I'm just saying the only way we could travel around there was tanks. There was——

Mr. SCHUMER. I am not so concerned about the use of tanks. It's the banging into the compound at the time the gas was being administered and there was a siege-like mentality.

Mr. POTTS. There was quite a bit of discussion, sir, about whether or not we used those to try to get the gas in or whether we set back at a distance and fire ferret grenades into these—into the compound. It was believed that by starting out with firing on them, they would believe that we were shooting at them, shooting bullets at them, ammunition at them, and that would be more provocative than trying to go up and put it in this other way.

Mr. SCHUMER. You haven't answered about the banging and trying to create holes. You could still have administered it this way and not—the building was shaking in the pictures—in the films that I saw.

Mr. POTTS. The tactical people I think are better off to answer that in terms of why that had to occur.

Mr. SCHUMER. Who is that? Is that Mr. Rogers? And may I have him as my second person as opposed to Mr. Jamar if he's more suited to answer it?

Mr. ZELIFF. By all means.

Mr. ROGERS. Yes, sir. Two reasons. First of all, we brought in the CEV's because we were very concerned—and we haven't brought this out yet—David Koresh had LAW rockets, light antitank weapons. That was a concern I had based on comments he had been making about blowing our Bradleys these 40 or 50 feet in the air.

Quite frankly, we had some concern that there was some stolen military LAW's that he might have possession of. We didn't know whether or not he did, but we were very concerned about it. And, ultimately, we brought in the CEV's and the Abrams because they can—they are better equipped to withstand that kind of rocket.

The boom that the CEV had on it is the only vehicle that we know of that's armored that we could use to actually break the outer portion of that wall. Two purposes: one is to make an opening to put a nonflammable, nonburning type of CS into that building; and, second of all, we wanted to use them to make escape openings for those people.

I was very concerned about the fact that these people may not be able to get out of that compound, particularly if the mighty men are controlling the doors and they have weapons, that, in fact, they have got everyone trapped.

So I think if you look at the photographs—and, yes, I agree with you, it's an ominous sight to see, quote, U.S. tanks, unquote, military tanks as people have called them, breaking into an American building. And I agree, that's the perception. Unfortunately, the perception is not always the truth. And what we're trying to do is explain why we did it.

Mr. SCHUMER. You're saying there was no alternative to that, to doing it that way, no better alternative.

Mr. ROGERS. I have no knowledge of any better alternative in trying not to provoke them and also to protect the lives of the agents that had that responsibility.

Mr. SCHUMER. Thank you.

Mr. ZELIFF. The time has expired.

Mr. BRYANT of Tennessee. Mr. Chairman, I have a point of order.

Mr. ZELIFF. Yes, sir. State your point of order.

Mr. BRYANT of Tennessee. The point of order I would like to make is concerning our format here in asking questions under the 5-minute rule.

I'm a new Member to the House, and I haven't learned perhaps how yet to gain that 5 minutes and turn it into 10 or 15 minutes, but I think what I'm seeing develop here—and I'm not sure it's just limited to one side or another—but I'm seeing people use 4½ minutes of their 5 minutes to editorialize, lecturing, whatever else and then in the last 15 seconds ask a question or two to two or three members of panel which allows them to go another 10 or 15 minutes beyond answering that question.

And I think the chairman, both chairmen, have been extremely fair in allowing people to fully answer a question that goes beyond the red light. But, again, what I'm seeing again as a new Member over here is an abuse of this system.

And I'm trying in my questioning to stick to my 5 minutes, but if we are going to persist in this pattern of talking and lecturing for 4½ minutes and squeeze in a question at the end so that the

entire panel can answer it, then I feel like I'm not representing my constituents if I'm going to limit myself strictly to 5 minutes.

Mr. ZELIFF. If the Chair can respond, I think not only did the very fine gentlemen from the FBI in front of us, but all of us individually up here have to lead by example. So I think if we can all kind of try to know what the rule is and work within that rule and try not to abuse it, I think your point is well taken. The Chair will try to see that it is adhered to. Thank you very much.

Mr. Chabot.

Mr. CHABOT. Thank you. I'd like to thank my colleague from Tennessee for bringing this to the Chair's attention right before I start questioning.

In any event, Mr. Jamar, you testified yesterday that the gassing of the Davidian house was first considered very soon after the initial raid, in fact within the very first week; is that correct?

Mr. JAMAR. As an emergency plan, yes, sir.

Mr. CHABOT. OK. And that emergency plan, this was the emergency assault plan. That's what we are talking about, right?

Mr. JAMAR. Yes, sir.

Mr. CHABOT. And this was for use in the case of an emergency defined as a homicide or a homicide-suicide type event which might occur in the compound; is that correct?

Mr. JAMAR. It was the only nonlethal means we had to stop them from doing something like that, yes, sir.

Mr. CHABOT. And the report says that it was generally agreed that if an emergency response was warranted, the FBI would use armored vehicles to punch holes and insert gas into the building. That's correct? Is that right?

Mr. JAMAR. Yes, sir.

Mr. CHABOT. So, basically, the emergency plan is, for all intents and purposes, the plan that ultimately occurred?

Mr. JAMAR. With some modification, yes, sir. In fact, some pretty substantial modification.

Mr. CHABOT. OK. Now, Mr. Potts, let me ask you this. When you first heard or discussed the emergency plan, it's my understanding that you were very opposed to the idea of using gas in this concept of the emergency plan, is that right?

Mr. POTTS. No, sir. The emergency plan came in very early on, and Tony Betz began to examine the gas——

Mr. CHABOT. Not to interrupt you, but let me then rephrase my question.

I thought I heard you say before when this plan to use gas, the ultimate plan to use gas, was considered, it's my understanding that you were opposed to that plan; is that right?

Mr. POTTS. I was not in favor of going forward at that point.

Mr. CHABOT. OK. So I think not in favor of going ahead with that plan means you were opposed to it, right?

Mr. POTTS. That's right.

Mr. CHABOT. And you were opposed to it, I assume, because you felt there was too much risk involved; is that right?

Mr. POTTS. No, I think it was more the unknown, sir, more than it was what we did know. It was the unknown in terms of what their reaction might be and how we could measure that. It was the unknown as to whether or not maybe there were other things that

we might be able to do that we had not yet tried. It was all of those questions that I thought that we had to answer, as well as what would the effect of CS gas be on those inside the compound.

Mr. CHABOT. That was one of the things as well. You weren't sure about what the effects might be on the folks within the compound, particularly the children?

Mr. POTTS. Yes, sir.

Mr. CHABOT. I think that's what everyone here agrees, that that was the particular concern that we had.

Now, it was also—I understand there was a danger of waiting—Mr. Jamar, I think you were concerned that there was a danger if we waited too long, one of the dangers being that Koresh and his people might try to break out; is that right?

Mr. JAMAR. Yes, sir.

Mr. CHABOT. They never did try to do that, did they?

Mr. JAMAR. No, they didn't, no.

Mr. CHABOT. And in addition to that, you felt that there was the risk of mass suicide; is that right?

Mr. JAMAR. That was a fear, yes, sir.

Mr. CHABOT. And that, obviously, never happened—at least it didn't happen until the gas was pumped into the building which, in essence, triggered that which we were trying to avoid, which was a mass suicide?

Mr. JAMAR. Well, I think on April 19 he demonstrated without any—removing any and all doubt that that was his ultimate goal. That's why I think, had we waited, he would have found a way to accomplish that.

Mr. CHABOT. That was your opinion, that that was his ultimate goal.

Mr. JAMAR. Based on his actions on the 19th, he demonstrated his goal very clearly. He could have let those people come out. All they had to do was walk out.

Mr. CHABOT. His attorneys testified that they thought there was a deal and we all thought—some people thought he was writing this Seven Seals, et cetera, and there's some dispute about that, I understand.

Mr. Sage, let me ask you a question. As I understand the plan, after the gassing began, any people who left the house and came out were to be steered toward the M–88 tank retrieval vehicle and the Bradley fighting vehicles, basically; is that right?

Mr. SAGE. They would come out of the—initially, the instructions were to come out the front of the compound, walk down the driveway, just exactly had been the plan since the 2d of March, to a large Red Cross flag where they would receive medical attention for——

Mr. CHABOT. But they were going to be directed to some degree by these fighting vehicles, Bradley fighting vehicles and the M–88 tanks. Mr. Jamar is nodding his head.

Mr. SAGE. I believe that's correct, yes.

Mr. CHABOT. Now, after the initial assault and after all the flash-bang grenades that were thrown, whenever anyone came out of the building—and that I understand happened a couple of times—and after the gas attack and after you learned that these people expected death, they expected Armageddon, they figured that you all

were the Babylonians, did you really expect that mothers would lead their children toward the M–88 tank retrieval vehicle and toward the Bradley fighting vehicles? They thought you were the enemy and all these things happened. Did you really expect them to lead their children willingly toward these very scary looking vehicles?

Mr. ZELIFF. The gentleman's time is expired, but you can respond, by all means, two of you.

Mr. SAGE. Hopefully expected it, prayed that it would happen.

Also, we need to add in there that toward the latter stages of the negotiation and part—this, again, is a dynamic issue subject to change throughout the 51 days.

One of the other things we attempted to do was to drive a wedge between David Koresh and Steve Schneider and his followers, to try to convince them or to shed light or at least plant the seed for their consideration that Koresh in their eyes, instead of being a messiah, may, in fact, have been a false prophet in the end time.

If we had been successful in doing that, if Steve would have had the capability of carrying that forward, then again that goes to the possibility that he may have been able to lead or someone may have been able to exercise some independent thought on behalf of their children and get them out of there.

Yes, sir. We did hope and we did pray that they would make their way out of there safely.

Mr. CHABOT. Thank you.

Mr. ZELIFF. Mr. Jamar, do you have something to say? You are the second part of that team here, the way this thing is working.

Mr. JAMAR. Thank you. I would add that the gas is designed to make you want to leave that room. It removes all this fear of Babylonia or Babylonians, fear of Koresh. And the instinct we were hoping for is mothers to say, "I have got to get out of here, and I have got to get my child out of here. I'm reclaiming my child from Koresh." That's what we were after, to grab those children and come out.

We couldn't have a normal vehicle waiting, because the people would shoot the agents. It would be nice to have something that would be less threatening to someone sitting out there with a Red Cross flag.

By this time, I think the—after just a few weeks, the tanks and the Bradley vehicles didn't mean much to anybody in there. It was just one more vehicle. This was just a normal part of their day, didn't bother them in any way.

It's a discussion we had earlier today, why didn't those people come out in that fire? What forced them to stay? And someone else offered to me, maybe he locked them in that bunker. I don't know that that's the case. That could have been. I said it was probably either the fear for their eternal salvation—it could be that he locked them in that bunker and didn't let them out. I don't know that. But I tell you, it wouldn't surprise me if he did.

Mr. CHABOT. Mr. Chairman, I only took the 5 minutes, but I just—there were such long responses, I would just like to make one 10-second response and that's that I think—everyone here acted in good faith, I believe. I don't believe what some of the people out

there think, the Government was against these people. I think you all acted in good faith.

But as Mr. Hyde said early on, the mindset, the people that were in that building they weren't like you and me. They had a different mindset. I just think our Government assumed they would take rational action on behalf of themselves and their kids, and we see that they didn't do that because we didn't enter the minds of the people in that compound and that's where I think the mistake was made.

Mr. ZELIFF. Thank you, Mr. Chabot.

Mr. SAGE. Mr. Chairman, since he has revisited Mr. Hyde's comments, frankly, we didn't have enough—sufficient time to respond to—may I have just a moment?

Mr. ZELIFF. Do you have any objection?

Mr. SCHUMER. No.

Mr. ZELIFF. By all means, just one of you.

Mr. SAGE. I understand. One moment coming up.

Mr. Hyde, and I wish he was here, too, because I don't want him to labor under the misperception that we did not fully explore the possibilities exhibited by religious considerations and so forth. We explored them to the fullest extent we felt we could with all of the experts that we could reach out and several that we didn't have to reach out for. That was not a situation where we did not try to get into that posture of his—what he was all about.

But what needs to be stressed succinctly is not one child, not one Branch Davidian, exited that compound based upon religious dialog, the only possible exception being early on when Agent Cavanaugh, with our assistance, facilitated the reading of a brief passage of scripture and kids initially were let out two-by-two. We would have done that forever if that would have facilitated the release of another child, but he did not explore that as a viable option, although we were prepared to do it as long as we had to.

Thank you very much.

Mr. ZELIFF. Thank you. Mrs. Thurman.

Mrs. THURMAN. I'm just going to take a few seconds, and then I will yield my time to the gentleman from Virginia.

Mr. WISE. West Virginia, by God.

Mrs. THURMAN. West, by God, Virginia.

Mr. ZELIFF. West Virginia, by God.

Mrs. THURMAN. I'm sorry.

How many hours do you believe in this total time did you spend working with Mr. Koresh? And have you ever calculated how many hours you actually believe you spent with him in talking and trying to figure him out?

Mr. SAGE. I can give you exact numbers as to how long we talked to him on the phone, but that's—for every hour spent talking to him on the phone, there was probably 3 to 5 hours spent in everything from Bible study—I mean seriously, I don't say that in jest at all—to talking to behavioral scientists and so forth, exhaustive hours.

Mrs. THURMAN. To try to figure him out. I want to make this point because I asked this very same question to Mr. Zimmermann and Mr. DeGuerin, and their total time was all of 32 hours. And I think that that point cannot be forgotten, that we are trying to

base testimony here that somebody says they knew they had him and he was going to come out on 32 hours versus the amount of hours and time and experts that you all brought into this.

So, second, Mr. Rogers, this issue of the bus, particularly since we've just heard this testimony just again about the children and the mothers, was there—it's my understanding that there was a trapdoor that led down to that. Is that what you found?

Mr. ROGERS. Yes, ma'am. It was inside the hallway at the end of the compound.

Mrs. THURMAN. So they really could have—I mean, if it had been their intention during that time and once that gas had gone in there, that they could have gone through that trapdoor, gotten to that bus—which I assume was part of the plan because you took firemen in there to water it down to cool it off to make sure that that was a safe haven for them?

Mr. ROGERS. Well, that was my hope, is that once the fire started that they had put the children in the bus. We immediately put all the firefighting resources at that end of the compound to try to cool it down, and then we immediately went in with agents underground, as I've testified, to try to see if there were children in there.

Mrs. THURMAN. So you believed there were actually two ways they could have escaped: They could have come outside the compound or they could have gone down here as a safe haven?

Mr. ROGERS. Exactly.

Mrs. THURMAN. Thank you. At this time, I would yield.

Mr. WISE. Very quickly, Mr. Rogers. And did you find any kind of impediment to their getting to that bus?

Mr. ROGERS. No, sir. We didn't find anything that would have prevented them from going in that bus.

Mr. WISE. Dr. Salem and Mr. Betz, concerning you, did you all calculate the amount—calculate the amount of gas that was injected into the compound during these several hours of insertion?

Mr. BETZ. Yes. These calculations were done.

Mr. WISE. And the statement was made that at the end there was an acceleration of the gas. But my question is whether, even with that acceleration, anywhere near a lethal level was reached within that compound?

Dr. SALEM. From the calculations that I have seen, sir, it was many times below the lethal concentration.

Mr. WISE. Mr. Betz, do you concur with that?

Mr. BETZ. Absolutely. I was present during the calculations and all the considerations that were given to the calculations.

Mr. WISE. Dr. Salem, much has been said about your conversations with the Attorney General. She, of course, will be here Monday. You spoke somewhat about that. Is there anything that you would like to add that you may not have had a chance to in your briefing of the Attorney General and how you advised her about the impact of CS gas upon those within the compound, both adults and children?

Dr. SALEM. As I said at the outset, the advice I gave, that if a chemical was to be used, the safest and most potent riot control agent was CS. And based on the literature, there are no validated

reports where people have died following its use, both infants and adults and elderly.

Mr. WISE. In the briefing you were giving to the Attorney General, were you calculating the amount of CS gas that would be introduced and—maybe I should rephrase that. In your briefing, did you assume the same level that actually was inserted into the compound?

Dr. SALEM. I was not involved in any of the operational or tactical discussions. I thought that they would have experts to decide on how much to put in. It was after the fact that I had seen the calculations, but the levels of effective concentrations and the lethal concentrations and safety factors I believe were discussed.

Mr. WISE. But—if I might, Mr. Chairman, but, in final question, though, given the amount that was actually inserted, if you had known that was to be the amount, would it have changed your advice to the Attorney General in any way?

Dr. SALEM. The concentrations that were actually achieved according to the calculations? No, sir.

Mr. WISE. Thank you.

Mr. ZELIFF. Mr. Taylor.

Mr. TAYLOR. Mr. Chairman, does this mean there are no further Republican questioners?

Mr. ZELIFF. OK. We have I guess——

Mr. TAYLOR. I would like to proceed in the normal order.

Mr. ZELIFF. I stand corrected. The Chair recognizes Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman. And in a moment I will yield the balance of my time. I just wanted to ask one brief question, because I'm a little confused about it.

Mr. Jamar, in your testimony today, you have, as I've listened to it, suggested that the people at the Waco facility inside the Davidian compound committed suicide. You don't have any evidence that the children inside the compound committed suicide, do you?

Mr. JAMAR. No; I was speculating on why they didn't come out. Some of them were shot and being shot was not apparent with it not being suicide. I think a fair description of the event and the loss of those lives is a murder/suicide.

Mr. SHADEGG. So any—well, there again, any statement by you that they committed suicide or you think this was a suicide or that it appears to have been a suicide or that it was a suicide or that they committed suicide or that they fulfilled their prophecy to commit suicide, since we never got to talk to them, is all a conclusion that you've drawn and, as you just said, speculation on your part.

Mr. JAMAR. A lot of survivors are saying there wasn't a suicide pact, so who do you—I'm speculating. I'm trying to resolve in my mind why someone would sit in there for 6 hours with gas and not come out with a full opportunity to come out. Who was keeping them from doing it or are they compelling themselves or what? I don't know. It has to be speculation.

Mr. SHADEGG. I think that's the point, is we don't know. For example, we know that broadcasts were intended to go in and were made saying you can come out, but we don't know—because we were never able to talk to those who died, we don't know if any of the children heard those broadcasts. We don't know for a fact that

any of the mothers heard those broadcasts. We don't know that they heard the full broadcast. We just don't know that they understood they could leave and would be fine and, therefore, by staying were committing suicide.

Mr. JAMAR. Those children were kept in there from March 5. I don't think those children had any idea that they had a choice about anything.

Mr. SHADEGG. So they clearly did not commit suicide. We could just assume the children did not commit suicide.

Mr. JAMAR. Again, that's why I said murder/suicide. The children were murdered. If he didn't let them come out, he murdered them.

Mr. SHADEGG. They didn't commit suicide, right?

Mr. JAMAR. They did not. I said it's a murder/suicide. Some did. Some persons in that place committed suicide.

Mr. SHADEGG. We were just talking about the children.

Mr. JAMAR. The children were murdered by Koresh.

Mr. SHADEGG. The children did not commit suicide.

Mr. JAMAR. They were murdered by Koresh.

Mr. SHADEGG. That's your conclusion. They did not commit suicide.

Mr. JAMAR. Because they were murdered by Koresh.

Mr. SHADEGG. Sir, did they commit suicide?

Mr. JAMAR. No.

Mr. SHADEGG. Thank you.

I yield the balance of my time to Chairman Zeliff.

Mr. ZELIFF. Thank you.

Mr. Potts, I just have one quick question before I yield the balance of the time to Mr. McCollum.

In your testimony, am I correct in understanding that at no time at Ruby Ridge you had in your operational plan any thought of using CS gas or other chemical agents?

Mr. POTTS. No, sir—I'm sorry. There was consideration being given to using CS gas. There was discussion about using CS gas. There was never a decision to go forward with CS gas or approve the use of CS gas there.

Mr. ZELIFF. But was it in the plan to consider using it?

Mr. POTTS. I don't know if it was in the plan or not.

Mr. ZELIFF. Let me read a paragraph here: On August 23, 1992, the above actions were repeated. If no response from the compound was received, the APC's would be prepared to begin destruction of portions of the structures inside the compound. These destructions will not include the major living areas of the main residence. If no response is received at this time, ARC's will be prepared to deliver chemical agents into the residence in anticipation of conducting an entry into same.

Mr. POTTS. There was no approval to go forward with putting CS gas into that location.

Mr. ZELIFF. I guess what concerns me is the rules of engagement at both locations and the use of gas.

I now yield to Mr. McCollum.

Mr. MCCOLLUM. I thank you for yielding.

I want to get a quick question in here, if I can, about the question of the breakout. I would like to ask Mr. Jamar and Mr. Rogers this question.

It is my understanding from looking at the report that the Justice Department did, on the meeting on the 14th of April, where, Mr. Rogers, you were present and some of the key military advisers who were advising the Attorney General on the gas were meeting on the gas plan, that it was asserted by the military advisers they did not believe that maintaining the hostage rescue team in a constant state of readiness was possible and that perhaps the HRT should be withdrawn and further training be done with them.

There is also the question that's been raised, and a lot more that I'm not going to read here, about maintaining the perimeter, that the FBI regarded the perimeter as so significant that it urged the Attorney General to relieve the HRT with SWAT teams only as a last resort.

I'm a little confused about this. It seems to me, Mr. Jamar, that you have told us that you were worried quite a bit for some time preceding this final assault with the fact that the Davidians with Koresh might break out, they might try to use children as a shield and move out.

It also occurs to me that there was a concern, at least expressed by military advisers, and I gather, though it is not in this text, from other sources that perhaps Mr. Rogers didn't fully agree that the HRT needed to retrain or regroup. But I assume over a period of time that that was a consideration, that had the siege gone on for another few weeks certainly your men would have been very tired. I also gather that's one of the reasons why Mr. Potts had made his recommendation in the testimony or made the changes that are in his testimony today to put SWAT teams developed by the FBI for the future under the HRT command.

My question is this: Can you corroborate that? And what significance was the fact in your decisionmaking of going forward with the gas assault, the concern of the breakout, the concern of the tiredness potentially, and the need to retreat and regroup at some point of the HRT? And to what degree did you consider and why would you have discarded it, if you did, the use of local officials of sheriffs departments or SWAT teams from perhaps the State police, the Texas police, or whoever else was available, at least to guard the area at some distance away to make this area secure?

Mr. Rogers, then Mr. Jamar.

Mr. ROGERS. The reason that we felt the HRT was the proper unit to maintain that perimeter is we've already talked about the use of military vehicles. The team members were trained as drivers. They were familiar with the safety of those vehicles. We had certain electronic and other type equipment that is unique to our team.

Quite frankly, the U.S. Government has put a lot of money into that team in order to try to make it the best in the world. And those particular items that we used, when you get into night equipment, night vision equipment, et cetera, the other team is not trained for. Our team is a full-time team. The SWAT team trains maybe once or twice a month. So when you compare the level of equipment sophistication, the training, there is clearly no other option in my mind.

You asked the question about the meeting with Attorney General, I believe. I believe she asked me whether or not the team was

tired. And I said, no, the team wasn't tired, but I agreed with what the military personnel had noticed and that is that had they had the same kind of unit under the same kind of conditions, they would be looking to pull them out for retraining.

And what we're talking about are the very perishable skills that the team has that had not been exercised in 50 days. We're also talking about cognitive skills, decisionmaking, judgment-type skills which tend to degradate when you keep people on the line for as long as we did.

As an example, I had snipers that physically stayed in position for 11 days before they ever came out of the sniper position that they were in, looking and watching and reporting in the intelligence. That takes a large toll on these kinds of people, not that they are physically tired, but it's those other skills I referred to.

Mr. MCCOLLUM. Mr. Jamar, and you are now going to answer and not only respond to that, to what degree, as I asked, was this a factor in your concern with when you did the assault? In other words, the need for it, whether it was on the 19th or if you had to do it within a few days? Two or three weeks later? At some point, how urgent was your concern over the HRT team's skills and the ability to have them prepared and maintain that perimeter to your final decision?

Mr. JAMAR. Let make sure I remember to answer this part. When you said the breakout, I wasn't worried about escaping, I was worried about them being shot down. Let me make that clear.

Mr. MCCOLLUM. Understood.

Mr. JAMAR. It was not a short-term concern for me. It was a long-term concern. I did not say, we need to do this the day after tomorrow because HRT is tired. Not at all. That's weeks away, in my opinion.

Mr. MCCOLLUM. That's what I want to know. Weeks——

Mr. JAMAR. Of course, I had a great concern about what Mr. Rogers just described. It was not a matter of days to me. It would have been weeks.

Mr. MCCOLLUM. Thank you very much.

Mr. ZELIFF. Mr. Taylor.

Mr. TAYLOR. I want to just open this up to the panel and, if you would, they are fairly simple questions, yes or no.

Did the testimony of Mr. Koresh's attorneys, the one who said he gathered his 15 children around him and only 3 of them were lawfully in his name, did that pretty well convince you that he was having children out of wedlock by girls as young as 12 and 13? Have you followed the hearings? Because it convinced me.

Mr. SAGE. Yes.

Mr. TAYLOR. Did the postoperative search of the building convince you that there were illegally converted machineguns on the premises, at least 48 of them? Yes or no.

Mr. JAMAR. The testimony in the trial—sir?

Mr. TAYLOR. I'm sorry.

Mr. JAMAR. There was testimony in the trial that there were 48, at least 48, yes, sir.

Mr. TAYLOR. So you're convinced of that?

Mr. JAMAR. Yes, sir.

Mr. TAYLOR. Were there also handgrenades found?

Mr. JAMAR. Yes, sir.

Mr. TAYLOR. You made mention now of light antitank weapons.

Mr. ROGERS. Concern for that, yes, sir.

Mr. TAYLOR. Just concern? They weren't found?

Mr. ROGERS. We didn't recover any.

Mr. SAGE. They did find some inert RPG's, rocket-propelled grenade projectiles.

Mr. TAYLOR. I know what an RPG is, sir, thank you.

There was also a woman who claimed Koresh kept her against her will for 3 months. Another says Koresh compiled a hit list of former members that he was going to have eliminated—his words, not mine.

Do you gentlemen believe in family values?

Mr. POTTS. Absolutely.

Mr. ROGERS. Absolutely.

Mr. JAMAR. Absolutely.

Mr. TAYLOR. Do you think that's the kind of family values that this Congress pledged to bring to the American people?

Mr. SAGE. Not by my definition.

Mr. TAYLOR. Do you people believe in personal responsibility? Because that leads to the next question. We have always said that—several members of this panel and other panels have said if Koresh had just told those kids and those old people to get up and walk out of here, they would have done it. After all, children were sleeping with him. Old people were giving him everything they owned. Husbands were giving their wives to him. They would have done anything he said, including get up and walk out of here. But he was using them as human shields, wasn't he?

Mr. ROGERS. Mr. Taylor, can I bring something up to you that has really bothered me?

Mr. TAYLOR. Yes, sir. But could you do that on your time?

Mr. ROGERS. Sure.

Mr. SAGE. The answer to your question is not only yes, but that specific statement was made to David and to Steve that he knows full well that if he directs those people to come out, they will come out. And we asked him to do that.

Mr. TAYLOR. That's why I would like you to comment on something that appeared in one of the local rags. It's a statement and it says, "What the Government's assault on the Davidians' compound succeeded in doing, whether out of compassion or vainglory or combination of both, was to kill them."

Now, if you believe in family values and you believe in personal responsibility, how can anyone who believes in personal responsibility say that Koresh accepted his? That's not personal responsibility. That's hiding behind women and children.

I mean, I have seen witness after witness brought by these folks first saying Koresh was just a simple old country preacher who had a couple of weapons and, yes, he was having sex with 11- and 12-year-olds, but that's OK. And, yes, he did have a hit list, but we don't want to hear from that witness. And, yes, he kept people against their will, but we don't want to hear from that witness.

And you have the reporters who wrote about him and demanded local law enforcement do something about it. They left town for fear of their lives, but we don't want to hear from them. They

changed the markings on their cars, they changed the locks on their newspaper building, but we don't want to hear from them.

How can anyone justify—and then they bring a doctor who says that because only four ATF agents were murdered, there wasn't really an ambush. And they are trying to paint themselves as pro law enforcement.

Gentlemen, you are the thin blue line between the laws we write and anarchy, and I appreciate what you're doing. And I want to ask this panel, like I've asked every panel before you, is there anything that you have seen or heard or read to justify the murder of those four ATF agents or in any way washed David Koresh's hands for the deaths of those 80 old people, women and children? I'm going to make it a little bit longer than before.

Please, Mr. Rogers, I still got a little time, so jump in.

Mr. ROGERS. Thank you, sir. No, I've seen absolutely nothing.

I would also like to go back to a point you made about the weapons inside. It's my belief that had he planned on coming out, he would have reconverted the automatic weapons into semiautomatic, because that's the best evidence to put him in jail are those automatic weapons which we recovered.

Mr. TAYLOR. Would anyone like to answer the question of whether anything you've seen or read or heard justifies the murders of agents or washes David Koresh's hands for the death of those 80 people?

Mr. JAMAR. Nothing.

Mr. ZELIFF. We are limited to two, Mr. Taylor. You got your two.

Mr. TAYLOR. You can nod your heads, guys.

Mr. ZELIFF. That's fair. OK.

Mr. Buyer has rejoined us. You are recognized for 5 minutes.

Mr. BUYER. Thank you, Mr. Chairman.

Gentlemen, we were on a track of some questions the other day, we didn't get to finish that, and I want to try to touch on some of that, but I have a couple of specific questions.

One, Mr. Jamar, about this letter from Koresh that Mr. DeGuerin calls it the surrender plan, what physically happened to the letter? Did you fax it to Washington, now that we know that you called Washington at one point?

Mr. JAMAR. The command post faxed it to Washington. We also faxed it to behavioral scientists to review. We faxed it to all sorts—it got around. We asked everybody, what does this mean? What do you think it means? Is this letter anything new?

Mr. BUYER. When you had your 2-hour conversation with Mr. Hubbell, which we now know Mr. Hubbell was the direct link to communications with the White House, did he have this surrender plan, this letter?

Mr. JAMAR. Byron had the 2-hour conversation.

Mr. BUYER. Mr. Sage, I apologize.

Mr. SAGE. I'm not aware of what he had or did not have, sir, I'm sorry.

Mr. BUYER. That's fair enough. He did not refer to it in the conversation that he had it or nor did you discuss it?

Mr. SAGE. Not that I recall. And, again, this was one of many issues brought up. It was not an agreement or anything that—I mean, it was a topic, but it was not the sole topic.

Mr. BUYER. One thing I will comment that has been very helpful to me is, late last night, even though I got back to my apartment at midnight, I was up until 1 o'clock, I was listening to these key excerpts from the—from your negotiations. It was very helpful to me, so I don't—there was no date-time on this, and so I was trying to put it into perspective. But it was very helpful to me listening to these tapes.

And, see, I can't even tell voices, so I'm not sure which of you or, Mr. Sage, if this was you or someone else on the tapes. A lot of—not only in the Justice report, but a lot of you have commented about these—the listening device tapes.

Let me espouse that, having been a trial lawyer for years now, I understand that in courtrooms and in advocacy there are a lot of games that go on when you have motions for discovery and when you hold things out until the judge forces you.

I think it is very disappointing, though, that Justice would play games with us over here when requests went in for these listening tapes long ago and just now they are being sent over to us. That's really unfortunate, because I would have enjoyed an opportunity to listen to those so I would have an opportunity to understand what you guys were going through.

I think it would be very helpful for me, because when we talk about perishable skills, one of the most perishable skills in negotiations is patience. I know that from my negotiations in dealing with the other side as a practicing attorney. And I'm not sitting in second judgment of you, Mr. Sage, OK?

Mr. SAGE. That's an accurate representation. That's why we cycled. The majority of our negotiators came in on a 2-week turnover.

Mr. BUYER. That's why you had a negotiating team.

Mr. SAGE. That's correct.

Mr. BUYER. Now, while you were going through these negotiations were you being briefed by whomever is monitoring the listening devices? Are they saying, here's what they're talking about, here's what our senses are, here's what their emotions are, here's where—yes, no?

Mr. SAGE. Periodically, we would have the daily briefings which would bring up topics. If there was something that was—that was absolutely significant, that would be brought to the attention through what we refer to as situation reports, sit reps. It would be channeled to any aspect of the command that needed to know that information immediately.

It would, obviously, go into the onscene commander. But often they would come in or route that in to us. And either Gary Noesner, who was here yesterday, who was one of the coordinators, or Clint van Zandt or myself, as the day team leader, would go over and make sure the team was aware of it.

Mr. BUYER. Thank you.

Mr. Potts, did Mr. Hubbell ever tell that you either he or the President wanted to approve any shift in the negotiation plan? That's one question.

The other question is, did Mr. Hubbell ever tell you that he had spoken to the President and the President wanted the siege to be ended and understood that CS was how it was to be done?

Mr. POTTS. No, I heard that the—from Stuart Gerson, who told Director Sessions, who told me, that the President had indicated that he wanted to be advised if there was a change in the strategy from negotiation. That was early on in this.

I'm sorry, the second one?

Mr. BUYER. The second question, did Mr. Hubbell ever tell you that he had spoken with the President and the President wanted the siege to end and understood that the CS was how it was to be done?

Mr. POTTS. No, sir.

Mr. BUYER. All right. So the first time the President really learned about the CS was this meeting on the 18th that the Attorney General then had with the President?

Mr. POTTS. I don't know, sir.

Mr. BUYER. I'll have to ask the Attorney General on Monday?

Mr. POTTS. I believe so.

Mr. BUYER. Thank you. I appreciate it, gentlemen. Thank you.

Mr. ZELIFF. Thank you very much.

The Chair now will recognize Mr. Barr for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Potts, there has been some discussion today of Ruby Ridge and the consideration being given to the introduction of tear gas or CS gas there. And do you have with you a document dated August 23, 1992, FBI/USMS Op Plan, Bonners Ferry, ID?

Mr. POTTS. No, sir.

Mr. BARR. OK. Let me ask a clerk to deliver this to Mr. Potts, please. I direct your attention to paragraph 2.

While that's being brought over, I'd like to read an operative portion of it.

On August 23, 1992, the above actions will be repeated. If no response from the compound is received, the APC's, armored personal carriers, will be prepared to begin destruction of portions of the structures inside the compound. This destruction will not include the major living areas of the main residence. If no response is received at this time, ARC's will be prepared to deliver chemical agents into the residence in anticipation of conducting an entry into same.

Was that the Ops plan?

Mr. POTTS. Sir, it's—I don't know. I don't have all the——

Mr. BARR. Is that document or is that document not the Ops plan? Very simple question.

Mr. POTTS. No, sir. It's not as simple as you think.

Mr. BARR. OK. Where—where is the Ops plan, if this is not?

Mr. POTTS. I don't know, sir. I don't have access to all that.

Mr. BARR. Is this the Ops plan? You can—is this or is this not the Ops plan?

Mr. POTTS. I don't know.

Mr. BARR. You don't know. Were you there?

Mr. POTTS. No, I was not there.

Mr. BARR. Did you ever have an Ops plan?

Mr. POTTS. There were several——

Mr. BARR. Have you ever seen an Ops plan for it?

Mr. POTTS. For that?

Mr. BARR. Yes, for that.

Mr. POTTS. Yes.

Mr. BARR. OK. Is this the Ops plan you've seen?

Mr. POTTS. I don't know whether it's the same one or not.

Mr. BARR. You don't have any recollection of whether it is or is not?

Mr. POTTS. I do not know.

Mr. BARR. I think that's a very disingenuous response.

Mr. POTTS. No, sir. It's not.

Mr. BARR. I think it is.

Dr. Salem, if I could—and I understand that there's a great desire on the part of everybody connected with this to deny that anything that we did, our Government did, caused the death of the children there, and I understand your testimony that CS gas would not directly or would not likely directly cause the death of a child. I understand that.

We do have at least one autopsy photo here—we talked about this last night. It's in the record. Medical examiner photo of Doe 57, a 6- to 8-year-old girl, cause of death, asphyxia, inflammation in throat and lungs. And there was some testimony last night by a medical doctor that that would be consistent with—possibly consistent with gas. My question really is, one, is that possible? And I'd like your objective opinion, because I don't think you really have any ax to grind here.

Dr. SALEM. No, sir, I don't.

Mr. BARR. Is it possible that the CS gas would cause inflammation in the throat and lungs of a 6- to 8-year-old child?

Dr. SALEM. CS gas is an irritant, and it does cause irritation of the mucus membrane.

Mr. BARR. You might want to pull that a little bit closer.

Dr. SALEM. CS is a respiratory irritant. It causes inflammation of the mucus membranes which line the respiratory tract. To get to where the inflammation is that great, you're going to need a very high concentration, sir, to get to that. It may be a combination of the blankets that were put over the children, plus——

Mr. BARR. No, I understand that and accept the fact that——

Dr. SALEM. And if you exclude all the oxygen——

Mr. BARR. But it is—is it possible that it could have caused inflammation in the throat and lungs of a 6- to 8-year-old girl?

Dr. SALEM. Yes, it is possible that CS can do that.

Mr. BARR. OK. Also, with regard to the introduction of CS and methylene chloride, that was being injected into the building, right? And then there was a fire that started.

And I don't want to get into what caused the fire to get started. We all agree that there was a fire that started.

Would the burning and the CS—the combination of the CS and the methylene chloride in the building and the burning have generated toxic substances such as hydrogen cyanide?

Dr. SALEM. Methylene dichloride I don't believe causes or generates hydrogen cyanide.

Mr. BARR. But during the burning process.

Dr. SALEM. Yes. Hydrogen cyanide is released from the burning of many materials, such as wood, plastic, fabrics.

Mr. BARR. OK. So the fire, with all these chemicals, it could—I'm not asking you to render an opinion that it did—but it could have generated hydrogen cyanide?

Dr. SALEM. Yes, sir.

Mr. BARR. And that being the case, is it certainly not a reasonable presumption that that substance being in the compound, in the building where people are located also, could that have inhibited in some way their ability to get out of the building?

Mr. TAYLOR. Mr. Chairman.

Mr. ZELIFF. Yes.

Mr. TAYLOR. The gentleman is entitled to his questions, and I hope y'all will yield him some time to answer, but he has gone well beyond the red. I just want to make that point.

Mr. ZELIFF. OK. That's so noted. Please answer the question, just two of you.

Mr. BARR. I only need one. I don't want necessarily two. I'm just trying to limit it here just to Dr. Salem.

Dr. SALEM. Experiments have shown that when you have I believe 550 milligrams per cubic meter in an enclosed chamber, the amount of cyanide that's generated—I'm sorry, 10 milligrams per cubic meter, which is what a trained soldier can tolerate, and the amount of cyanide generated is less than two 30-milliliter puffs of a cigarette. Cigarette smoking also generates hydrogen cyanide. So if that puts that in perspective.

Mr. BARR. So—but the——

Mr. ZELIFF. The gentleman's time is expired.

Mr. BARR. But that doesn't answer the question. I'd just like to, if I could, remind the witness what the question was.

Mr. ZELIFF. OK. Well, on that basis——

Mr. BARR. I'm not going into another area of inquiry, not at all.

Mr. ZELIFF. Dr. Salem, could you try to answer the question?

Mr. BARR. That is simply whether or not, given the fact that these substances could have been generated by the combination of these chemicals in there and the burning and hydrogen cyanide possibly having been created, could that have interfered——

Mr. TAYLOR. Parliamentary inquiry.

Mr. BARR [continuing]. With somebody leaving—inhibited their leaving the building?

Mr. TAYLOR. Parliamentary inquiry. Whose time are we using, sir? Because he——

Dr. SALEM. Again, that depends on the concentration, sir——

Mr. BARR. But it is possible? OK, OK.

Dr. SALEM [continuing]. Whether or not it's possible.

Mr. BARR. I think that answers that question. Thank you.

Mr. ZELIFF. I think that's just about done it on both sides here. Mr. McCollum, final 5 minutes.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman.

I just want to make one comment, Dr. Salem. You're a fine toxicologist. You've got a great record and obviously know a lot about CS gas. And were called upon for that reason. But there is an irony in the fact that it came out today that you have not been published on the CS gas question. And last night Mr. Schumer was making a huge noise over here on our side of the aisle that several of the

people in the panel, the other toxicologists, had not been published. So no reflection on you, just the observation.

Now I want to ask one or two quick questions.

Mr. Rogers, I want to know if you agree with Mr. Jamar that your HRT unit could have stayed on the scene there without needing withdrawal for refresher training or whatever for weeks more than the April 19 assault?

Mr. ROGERS. They could have physically stayed there. That would not have precluded the degradation of their skills though, sir.

Mr. MCCOLLUM. And if the degradation of their skills got great enough, you'd have to have some kind of augmentation, whether that was as well-trained people or not, in order to maintain the perimeter. Is that not true?

Mr. ROGERS. We would have to have those comparable skills in order to maintain the perimeter.

Mr. MCCOLLUM. All right. How long could they have stayed there before you think that would have been a real problem, before you would have had to withdraw some in order to maintain the perimeter?

Mr. ROGERS. I think within a matter of a couple weeks we'd be looking to have some kind of remedy to the problem.

Mr. MCCOLLUM. All right. Mr. Potts, did you know that Mr. Jamar felt 99 percent certain that the Davidians would fire on the CEV's, thereby making the accelerated use of CS gas probable before the assault on the 19th?

Mr. POTTS. I certainly didn't understand that he believed that there was a 99-percent chance. When—when I spoke to him in late March on the phone, we talked about what the response would be of the Davidians if we put gas in. He said, I believe they'll shoot. And I said, I don't—how can we go forward if we believe that there's that strong a chance that they will shoot? What I believed had been developed as a result of our trip to Waco, along with Mr. Clarke, was a plan which everybody believed significantly decreased the chances of them firing on us when we inserted the gas.

Mr. MCCOLLUM. If you'd known Mr. Jamar felt that way, would you have had different advice for the Attorney General?

Mr. POTTS. I would have conveyed it up the line, and I think that the decisionmakers would have—would have had to significantly consider that. I believe that we significantly reduced that risk.

Mr. MCCOLLUM. I want to clarify something with Mr. Sage and Mr. Jamar in the last segment of questions. Earlier today you, Mr. Sage, said that Mr. Hubbell had been told by you about the plan of the 14th of April. And we went over that last night. You went over it almost ad nauseam. I think I understand what you're saying. I just want to clarify it.

I had asked you and Mr. Jamar at the end of the questioning last night about this and I specifically put the concerns I had in terms not of a surrender plan, which I understand you distinguish, not in terms of the fact that DeGuerin was working on trying to get these folks to write the seven seals interpretation or get Koresh to do that, not in terms of those generic things, but in the specific terms that concern me, which I think you answered for me, and which may have had a different slant, if you will, or different view-

point or perspective than the simple answer you gave earlier today to that question that was asked you—did Mr. Hubbell know about the discussions and the goings on with DeGuerin.

I asked it in terms of things such as what Dr. Tabor had said at one point and the interpretation that DeGuerin was making, as I understood it, that if you moved against the compound with the Bradleys, even if accompanied by declarations of an assault, the very acts of aggression would be interpreted by Koresh as a confirmation of God's mission to him as a martyr or to be a martyr, rather than to be a messenger, which is what Mr. DeGuerin and Mr. Tabor explicitly discussed with us in their testimony.

And in terms of the fact that it was their view, which had been expressed to you, as I understood it but in how much detail I'm not clear, that at this stage, at the 14th of April, that there had been a change of attitude by Koresh, that they felt very strongly that Koresh at that point was being persuaded or, actually, felt he'd already been persuaded that he was the messenger. That is, it wasn't in the sense of the fifth seal, that he was the martyr, as in the Book of Revelation, with a messiah that came in that apocalyptic sense, but rather that he was to have a chance to be the messenger and to release himself from the bondage of the building where he was housed and ultimately, while in jail, he could still talk about this. And they felt that in large measure, because of what had gone on, they said, as a joyous occasion in there, they saw all the people reacting, really believing they were coming out, all that.

What I'm getting at is, and I don't want to belabor this, but when you said to me last night, if I'm not mistaken, and I don't think I am, is that you did not believe you conveyed that type of detail, that type of sense of what DeGuerin and Tabor were talking about to Hubbell.

And I think Mr. Jamar was confirming that you two just didn't see it that way. You didn't see it in that detail sense of the religious message as something to convey at the time of the 2-hour telephone conversation. And as I asked Mr. Jamar, did you ever convey that yourself to anybody up in Washington? And I think your answer was, no, as I recall it. Could you elaborate on that, explain that to me? I just want to be sure I'm right.

Mr. SAGE. I'm a little confused as to the question, frankly.

Mr. MCCOLLUM. The question is whether or not——

Mr. TAYLOR. Mr. Chairman, the red light, once again, has been on for quite awhile.

Mr. SAGE. Well, I'd like to respond to that.

Mr. ZELIFF. He's finally gotten around to asking the question, and it's duly noted.

Mr. MCCOLLUM. The question is very simple. The question is, did you convey to Mr. Hubbell the DeGuerin perspective that Koresh had indeed had an attitude change in DeGuerin's opinion—I knew that wasn't your opinion—and that the attitude change was that he was now viewing himself as the messenger and that's why DeGuerin had such a strong hope, as confirmed by Tabor's views of the tapes and all that came out later, that there would be an opportunity for Koresh to pursue these pieces of paper, these writings, and they would more likely come out? Did you convey that to Hubbell?

That was the question I asked you last night, and you said you didn't convey that to him, as I recall.

Mr. SAGE. No. What I said last night, what I've said today and what I will say again, is that the issue regarding the transcripts was, in fact, discussed with Mr. Hubbell. I spent a great deal of time last night trying to refresh my memory, trying to get that back into context so that I could be just as clear and candid with you as possible but in the proper context.

Because therein lies the problem. This has been blown way out of context or way out of perspective as far as the importance placed, the day after this thing was brought forward, was nowhere near as great as you've been led to believe by the defense counsel. I wish that it would have had the merit that they attempted to convey to this committee or these subcommittees. I think we all wish that, but that was not the case. It wasn't the case then. It wasn't our perception one day after it had been brought forward.

But we did not dismiss it. We continued to pursue it, and that's evidenced by the negotiation transcripts which we'll be happy to make available to you.

Mr. MCCOLLUM. The bottom line is that you didn't convey that strong an impression to Hubbell because you didn't feel it was ever given that strongly?

Mr. SAGE. I conveyed to him the impression that was given to us, and I'm telling you that it was not that strong. Not that I didn't feel it was that strong. It had never been conveyed that strongly to us, and this was one day after the whole concept had been brought forward. It was——

Mr. ZELIFF. The gentleman's——

Mr. SAGE. It was fully conveyed to him in the context with which it had been presented to us.

Mr. ZELIFF. The gentleman's time is expired.

Mr. MCCOLLUM. Mr. Jamar, do you want to comment on that?

Mr. JAMAR. I think that we did hope there was something to this.

Someone asked me, what did we do with the letter? This is an analysis by a psycholinguistics expert of the three letters, April 10, 11, and 14. His conclusion was, in sum, I do not believe there is any writings any better or at least certain hope—I'm sorry. In sum, I do not believe there is in these writings any better or at least certain hope for an early end, for an early end to the siege.

Now he—his analysis, he says, the third letter, the letter of the 14th, is a content duplicate of the first letter that was sent on the 10th. OK. This was part of this series of letters from him.

My point here is it was not simply our opinion. It wasn't limited to my opinion and Mr. Sage's opinion. There were other people involved in the analysis of the probability of a change of heart or mind of Mr. Koresh. So Mr. DeGuerin took that very seriously.

I saw Dr. Arnold out here in the hall here a while ago, and the thing we discussed yesterday about me looking for—where was this change? Why didn't I ask you? Because I asked your staff, help me find that, because I'd like to understand where they got that idea, that there was this joy inside the compound. I did not detect that anyway.

I read the overhears last night, trying to find, is there a discussion of the new David? I didn't detect any. But the microphone was

very limited. I didn't detect any in the stuff I read in the transcripts, but I didn't have time to read all the 3 days, 4 days transcripts. That's why I asked the staff to help me find where in those transcripts will we find something of this new joy inside the compound.

I think it was Mr. DeGuerin's drive—like I said this morning, this is a man used to succeeding. He was driving. He was doing his best. This is our last hope with these people, because they knocked his legs out from under him the previous April 4. He put it in there because he had his heart and soul in it. I believe Mr. Arnold had his heart and soul in it. We had our heart and soul in it——

Mr. MCCOLLUM. I understand.

Mr. JAMAR [continuing]. I think, but we did not dismiss this out of hand. We gave this a chance.

I explained to Dr. Arnold a while ago, and he tried—I said, what about Steve saying to us, hey, I'm the editor, you're not getting anything until I see—I'm paraphrasing, please. You're not getting anything until I edit it. I haven't seen the first page. This is the fourth day. I just don't think they had their heart in it, sir.

Mr. MCCOLLUM. I understand. Thank you.

Thank you, Mr. Chairman.

Mr. ZELIFF. Thank you, Mr. Chairman.

One quick question. Mr. Potts, is there any chance that you could—there's a lot of interest in having a second round of questions here, but we could resolve that. Is there any chance that you could join the FBI panel on Monday morning?

Mr. POTTS. Yes, sir.

Mr. ZELIFF. OK. Thank you very much. And that will solve a big, big problem.

I just would like to say to all of you, you have our thanks on both sides of the aisle for being here. What you're going through is not easy, I'm sure, and what you went through on April 19 was not easy as well. And we thank you for being here.

The joint oversight——

Mr. BARR. Mr. Chairman, a unanimous-consent request over here.

Mr. ZELIFF. Yes.

Mr. BARR. If I could have unanimous consent that the document that I handed to Mr. Potts earlier, which he referred to and which I referred to, be included in the record.

Mr. ZELIFF. Without objection, so ordered.

Mr. BARR. Thank you.

[The information follows:]

FBI/USMS OPPLAN
BONNERS FERRY, IDAHO

I. SITUATION. AS PREVIOUSLY BRIEFED.

II. MISSION. FBI/USMS TASK FORCE WILL EFFECT THE ARREST OF SUBJECTS RANDALL WEAVER, VICKY WEAVER AND KEVIN HARRIS.

III. EXECUTION.

A: CONCEPT OF THE OPERATION. ON AUGUST 22, 1992, HRT SNIPER/OBSERVER WILL ESTABLISH OBSERVATION/FIRING POSITIONS OVERLOOKING SUBJECT PROPERTY. ONCE ESTABLISHED, HRT COMMANDER OR HIS REPRESENTATIVE UTILIZING AN ARMORED PERSONNEL CARRIER (APC) WILL ANNOUNCE LAWFUL INTENT TO EFFECT THE ARRESTS OF SUBJECTS LOCATED ON THE PROPERTY. HRT ASSAULT ELEMENTS, UTILIZING APCS, WILL BE PREPARED TO TAKE CUSTODY OF SUBJECTS IF AND WHEN THEY EXIT THE PROPERTY. USMS TACTICAL ELEMENTS WILL FORM AN OUTER PERIMETER AND BE PREPARED TO ACCEPT CUSTODY OF SUBJECTS FOR TRANSPORTATION. ~~AND CONDUCT TACTICAL CLEARANCE OF ALL STRUCTURES LOCATED ON THE PROPERTY.~~ FBI SWAT ELEMENTS WILL SECURE THE FORWARD COMMAND POST AREA. Changed per request of USM

ON AUGUST 23, 1992, THE ABOVE ACTIONS WILL BE REPEATED IF NO RESPONSE FROM THE COMPOUND IS RECEIVED THE APCS WILL BE PREPARED TO BEGIN DESTRUCTION OF PORTIONS OF THE STRUCTURES INSIDE THE COMPOUND. THIS DESTRUCTIONS WILL NOT INCLUDE THE MAJOR LIVING AREAS OF THE MAIN RESIDENCE. IF NO RESPONSE IS RECEIVED AT THIS TIME, ABCS WILL BE PREPARED TO DELIVER CHEMICAL AGENTS INTO THE RESIDENCE IN ANTICIPATION OF CONDUCTING AN ENTRY INTO SAME.

B: BLUE SIERRA (+): WILL ESTABLISH OBSERVATION/FIRING POSITIONS EAST OF SUBJECT PROPERTY AND BE PREPARED TO PROVIDE LONG RANGE PRECISION FIRE IN ACCORDANCE WITH STATED RULES OF ENGAGEMENT.

C: GOLD SIERRA (-): WILL PROVIDE LONG RANGE OVERWATCH POSITION COVERING BLUE SIERRA MOVEMENT AND ONE SIERRA ATTACHMENT TO BLUE SIERRA. OVERWATCH POSITION WILL BE PREPARED TO PROVIDE ILLUMINATION ON COMMAND.

D: HOTEL/ECHO: LEAD APC VEHICLE RESPONSIBILITY. TO CONDUCT INITIAL CALLOUT. BE PREPARED TO MAKE INITIAL ARREST AND FOLLOW-UP ANY SNIPER/OBSERVER ACTION.

E: GOLF: FOLLOW APC VEHICLE RESPONSIBILITY AND BE PREPARED TO ASSUME BLOCKING POSITIONS ON COMMAND.

F: CHARLIE: STAND-BY TACTICAL AND MEDICAL RESPONSE.

G: COORDINATING INSTRUCTIONS.

1. TOD: ON COMMAND.

2. TOR: ON COMMAND.

3. ROUTES:

a. SNIPER/OBSERVER: SWITCH-BACK ROAD EAST OF PROPERTY.

b. APC: WEAVER ROAD FROM COMMAND POST TO SUBJECT LOCATION.

4. RULES OF ENGAGEMENT:

a. IF ANY ADULT IN THE COMPOUND IS OBSERVED WITH A WEAPON AFTER THE SURRENDER ANNOUNCEMENT IS MADE, DEADLY FORCE CAN AND SHOULD BE EMPLOYED TO NEUTRALIZE THE INDIVIDUAL.

b. IF ANY ADULT MALE IS OBSERVED WITH A WEAPON PRIOR TO THE ANNOUNCEMENT, DEADLY FORCE CAN AND SHOULD BE EMPLOYED, IF THE SHOT CAN BE TAKEN WITHOUT ENDANGERING ANY CHILDREN.

c. IF COMPROMISED BY ANY ANIMAL, THAT ANIMAL SHOULD BE ELIMINATED.

d. ANY SUBJECTS OTHER THAN RANDALL WEAVER, VICKY WEAVER, KEVIN HARRIS PRESENTING THREATS OF DEATH OR GRIEVOUS BODILY HARM, THE FBI RULES OF DEADLY FORCE ARE IN EFFECT. DEADLY FORCE CAN BE UTILIZED TO PREVENT THE DEATH OR GRIEVOUS BODILY INJURY TO ONES' SELF OR THAT OF ANOTHER.

5. REHEARSALS AND INSPECTIONS: PER INDIVIDUAL TEAM LEADER.

IV. ADMIN AND LOGISTICS:

A. RATIONS. PER UNIT SOP.

B. ARMS AND AMMUNITION.

1. HRT SNIPER/OBSERVERS: M-700, M-16, M-88.

2. SNIPER OVERWATCH POSITION: M-700, M-79 WITH ILLUMINATION ROUNDS.

3. ALL OTHER TASK FORCE ELEMENTS IN ACCORDANCE WITH UNIT SOP.

C. UNIFORM/EQUIPMENT: PER UNIT SOP

D. METHOD OF HANDLING WOUNDED: SEE MEDICAL ANNEX.

E. METHOD OF HANDLING SUBJECTS: PER UNIT SOP

V. COMMAND/SIGNAL

A. COMMAND:

1. SAC: COMMAND POST

2. HRT COMMANDER: LEAD APC

3. SSA : FOLLOW APC

4. SSA COMMAND POST

5. USMS:

"CRISIS NEGOTIATION ANNEX
TO OPS PLAN

A NEGOTIATOR WILL GO FORWARD TO THE RESIDENCE IN THE APC. WHEN THE APC IS IN VIEW OF THE HOUSE, IT WILL STOP AND THE NEGOTIATOR WILL MAKE THE FOLLOWING STATEMENT:

"MR. WEAVER, THIS IS FRED LANCELEY OF THE FBI. YOU SHOULD UNDERSTAND THAT WE HAVE WARRANTS FOR THE ARREST OF YOURSELF AND MR. HARRIS. I WOULD LIKE YOU TO ACCEPT A TELEPHONE SO THAT WE CAN TALK AND WORK OUT HOW YOU WILL COME OUT OF THE HOUSE WITHOUT FURTHER VIOLENCE. I WOULD LIKE YOU OR ONE OF YOUR CHILDREN TO COME OUT OF THE HOUSE, UNARMED, PICK UP THE TELEPHONE AND RETURN TO THE HOUSE."

AT THE CONCLUSION OF THIS STATEMENT, THE APC WILL PROCEED FORWARD, DROP THE HOSTAGE PHONE AND WITHDRAW. IF WEAVER OR A CHILD RETRIEVES THE TELEPHONE, THE NEGOTIATOR WILL ATTEMPT TO INITIATE A DIALOGUE.

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Mr. POTTS. Mr. Chairman, I'm up here.

Mr. ZELIFF. OK, yes, Mr. Potts.

Mr. POTTS. Yes, sir. We—the FBI prepared a statement, a written statement. Could I ask that that be entered into the record?

Mr. ZELIFF. Without objection, so ordered.

Mr. POTTS. Thank you.

[The prepared statement of Mr. Potts follows:]

PREPARED STATEMENT OF LARRY A. POTTS, FORMER ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr. Chairman and Members of the Subcommittees, my name is Larry A. Potts. Thank you for the opportunity to appear before you this afternoon to discuss the role of the FBI in the standoff at the Branch Davidian Compound near Waco, Texas in 1993. Throughout the Waco siege, I was the Assistant Director of the Criminal Investigative Division of the Federal Bureau of Investigation.

Much has been written about the tragedy at Waco, including extensive reviews of the FBI's rationale, decisions, and actions throughout the 51-day ordeal. Many questions have already been answered; some questions never will be. There is no question, however, that the goal of each and every FBI employee involved in every stage of the standoff and in the horrifying final day was to save lives and resolve the crisis peacefully. Unfortunately, the objective of the FBI and the wishes of the country did not, and, ultimately, could not, prevail over the outcome chosen by David Koresh.

I would like to begin by providing an overview of the events in Waco which began with the deaths of four Bureau of Alcohol, Tobacco, and Firearms (BATF) agents on February 28, 1993, and ended with the Davidians committing a mass murder/suicide on April 19th. Most of the details have been made a matter of record, as the Congress, the Executive Branch, independent investigators, the media, and the American public, have exhaustively probed the incident in Waco. The FBI commends all of their efforts and has consistently pledged its cooperation with all inquiries into these events. We are pleased to cooperate fully on this occasion. The FBI firmly believes that any objective review of its decisions in Waco will reveal that each action was based in logic and on experience, and carried out with restraint.

This is not to say that things could not have been done differently or better, or that mistakes were not made. For example, the FBI and other federal agencies could have had a clearer understanding as to jurisdictional issues which arose; tactical and negotiating components of the FBI could have had better communication and coordination of efforts; and a well-organized pool of outside experts could have been assembled and available for immediate FBI consultation. But any mistakes that were made in the course of those 51 days were made by dedicated professionals who were trying to do their best under extraordinarily dangerous conditions throughout a siege of unprecedented length and difficulty.

Secondly, and perhaps most importantly, I would like to set forth the valuable lessons which the FBI has learned from the siege in Waco and the changes which we have implemented in response. Despite the tragic loss of life caused by David Koresh, America can take some comfort in knowing that the FBI's ability to deal with major crises has been strengthened and expanded as a result. The FBI has learned much and those lessons have been translated into constructive changes to FBI crisis management. In fact, a new structure that will ensure a more effective, balanced approach is in place. A chart reflecting the new structure is attached.

THE 51-DAY WACO STANDOFF

February 28, 1993

On February 28, 1993, at approximately 9:30 a.m. (CST), agents of the Bureau of Alcohol, Tobacco, and Firearms (BATF) attempted to execute an arrest warrant for Vernon Howell, also known as David Koresh, for federal firearms and explosives violations. An accompanying search warrant had also been issued authorizing the BATF agents to search the compound where Koresh and his followers, known as the Branch Davidians, lived near Waco, Texas. As BATF agents executed the warrants, they were met with heavy gunfire. During the shootout, four BATF agents were killed, 16 were wounded, and an undetermined number of individuals inside the compound were killed and injured.

Within hours, at the request of BATF officials, the FBI dispatched trained negotiators to the scene in Waco. By that afternoon, the FBI had sent in advance units of its Hostage Rescue Team (HRT). The following day, March 1, 1993, also at the request of Treasury officials, the FBI became the lead-agency responsible for resolving the standoff with the Branch Davidians.

The Following 50 Days

Over the course of the following 50 days, between 250 and 300 FBI personnel were present in Waco at any given time, along with hundreds of officers and agents from other federal, state, and local agencies. Over 700 agents and officers were needed to safely control the situation and maintain the lengthy perimeter around the compound.

The FBI faced an unknown number of men and women inside the compound who refused to surrender and an unknown number of children of all ages. The FBI was aware that the Branch Davidians were heavily armed and that their arsenal included fully automatic weapons, .50 caliber rifles, and hand grenades, as well as hundreds of thousands of rounds of ammunition. Based on the events of February 28, 1993, the FBI also knew that the occupants of the compound were ready, willing, and able to use their weapons against law enforcement officials.

In attempting to negotiate a non-violent end to the standoff at Waco and bring out safely as many people as possible, the FBI had 117 conversations with David Koresh for a total of

approximately 60 hours. Throughout the 51 days, the FBI spoke to approximately 68 individuals inside the compound for a total of approximately 215 hours. Between February 28 and March 23, 1993, as the negotiations were ongoing, 35 Branch Davidians (14 adults and 21 children) left the compound. In addition, another nine Davidians (all adults) survived the fire that destroyed the compound on April 19. Although 44 people emerged from the compound, the FBI believes that Koresh released only those who were of no use to him on the inside.

Throughout the confrontation with Koresh, the FBI's rules regarding use of force were vigorously emphasized to all agents. Pursuant to these rules, all FBI agents were prohibited from firing a weapon unless the agent or another person was in imminent danger of death or serious bodily harm. When agents were barraged with gunfire from within the compound on April 19, the FBI rules clearly provided for the agents to return fire. Even so, the FBI agents demonstrated remarkable restraint and did not fire a single shot during the entire standoff.

The FBI also clearly explained to the Davidians the "Rules of Safety," which stated that the Davidians could not display weapons at the windows or doors of the compound. Additionally, no Davidian could come outside the building with a weapon, and anyone who did come out, must fully comply with all FBI instructions. These rules were designed to reduce the chance of gunfire and further injury at Mt. Carmel.

In addition to advising the Davidians of the rules of safety, the FBI also kept the compound occupants advised of every move the FBI was going to make, before the move was made. After announcing its intentions, the FBI was able to constrict the perimeter around the compound, remove the fence, move tanks onto the grounds and even touch the sides of the compound itself while removing various items which the Davidians could have used for outside cover. All of this was done without violent response from within the compound.

The FBI's strategy for resolving the situation in Waco was twofold: (1) to verbally negotiate a peaceful surrender of Koresh and his followers; and, (2) to gradually increase the pressure on those inside the compound by tightening the perimeter around the compound and denying the Davidians certain comforts. In formulating this strategy and throughout the events in Waco, the FBI utilized its Behavioral Science Unit, the National Center for the Analysis of Violent Crime, and a host of outside experts in such specialties as religion and theology, psycholinguistics, cults, medicine, threat assessment, negotiation techniques, psychology and psychiatry. The experts provided a wide range of information on Koresh's state of mind and behavior, as well as information on an array of issues the FBI faced. The FBI also received hundreds of unsolicited telephone calls from individuals offering advice on how best to resolve the standoff with the Branch Davidians. As part of its exhaustive efforts to gather as much information as possible, the FBI followed up on most of

these telephone calls which appeared legitimate. Not all of the expert opinions were consistent on all issues but the FBI considered the information it received and made the best judgment it could towards achieving a peaceful resolution to the standoff.

Despite these efforts and all of the outside expert advice, the FBI was unable to convince the compound's occupants either as a group or individually to surrender peacefully. The response of Koresh was always to consistently promise to come out at certain times and to consistently break his promise and fail to do so. Eventually, he advised that the Davidians would emerge only when God gave such an instruction to him.

Based on the developments on-site and the advice of experts, the FBI concluded that permitting the standoff to continue would never lead to the peaceful surrender of Koresh, but instead would continue to elevate the risk to the innocent children inside the compound, as well as to the law enforcement officers at the scene. As a result, a strategic plan was then developed to deliver non-lethal tear gas into the compound in hopes of causing the evacuation of the occupants. For nearly two weeks, the FBI wrestled internally with the details of the plan, before presenting it to the Attorney General for approval, to best ensure a safe and satisfactory end to the standoff. In developing its plan to release tear gas into the compound, the FBI thoroughly considered and examined numerous strategic and tactical issues, including the possibility of a hostile reaction from the Davidians; the night vision capability of the Davidians;

the strategic firing point that the compound's tower provided the Davidians; the risk of harm to the children inside the compound; the possible harmful effects, if any, of tear gas; and, of course, the massive amount of weapons and ammunition in the compound and the dangerous people who had already killed four federal agents.

As a result of its extensive analyses of these issues, the FBI developed a non-combative plan to release tear gas incrementally into the compound over a two-day period, gradually causing certain portions of the compound to become uninhabitable. The plan provided for increasing the release of gas only to the degree needed to accomplish evacuation of the compound. The plan also included notifying the Davidians that the gas was going to be inserted into specific portions of the compound and providing them the time and means to exit the building safely. Extensive medical support, to include 12 physicians and 13 paramedics, would be standing by and loudspeakers and signs would be used to guide the people out of the compound. In the event that the Davidians opened fire on the FBI agents, the plan provided for the agents to return fire and to escalate the delivery of the tear gas into the entire compound to suppress the gunfire.

On April 17, 1993, after several days of discussion, debate and dissection, the Attorney General approved the FBI's plan. The Attorney General made extensive inquiry into virtually every detail of the FBI's plan, including the effects of tear gas on children and pregnant women. The Attorney General also

focused intensely on the factors which justified implementation of such a plan. Some of these factors included the impasse in the negotiations, the extreme difficulty in maintaining a safe and secure perimeter around the compound, the risk of disease caused by deteriorating sanitary conditions in the compound, the lack of proper medical care inside the compound, the reports of prior child sexual abuse, the remaining Davidians' refusal to leave any time in the foreseeable future, and the Davidians' ability to hold out for many more months, given their large stockpiles of food and water. It was also clear that the longer the siege was sustained, the greater the risk of harm to the FBI and other law enforcement personnel on-site, either by accident or by shooting from inside the compound. Koresh had established numerous vantage points from which to fire at agents around the compound and the expert opinions provided to the FBI indicated that Koresh might launch an offensive attack at any time against all law enforcement officials present.

The Attorney General and the FBI, with advice from the U.S. military, reviewed several options, everything from an assault on the compound to containing the compound with walls or barbed wire and seeking assistance to secure the area, before concluding that inserting tear gas was the only viable, nonlethal option. According to experts consulted by the Attorney General and the FBI, the tear gas would act only as an irritant and would not incapacitate the compound residents, including the children. The insertion of gas in stages would also demonstrate the FBI's

commitment to the Davidians not to conduct an assault on the compound. The Attorney General approved the FBI's request to implement the plan beginning on April 19, 1993.

April 19, 1993

At 5:59 a.m. (CST) on April 19, 1993, the FBI telephoned the compound and informed the Davidians that tear gas would be released into the compound. The FBI also made clear that this was not to be an entry into the compound and that the "rules of safety" were in force. At approximately 6:05 a.m., an FBI armored vehicle with an attached boom began inserting bursts of tear gas into the compound. Immediately, the Davidians began shooting at the FBI's vehicle. The FBI did not return gunfire, despite the fact that the approved rules of engagement permitted the use of deadly force by the FBI in the event the Davidians opened fire. Instead, the FBI chose to accelerate the delivery plan and increase the number of windows through which the tear gas would be inserted in an effort to suppress the gunfire from the windows. This escalation in the plan was approved by the Attorney General in advance and was contingent upon initial gunfire from the Davidians.

Following the release of the tear gas, no movement towards surrender was evident at the compound. During the next six hours, the FBI agents released additional amounts of tear gas into the compound, as they faced heavy gunfire from the Davidians. The agents demonstrated remarkable restraint and held

their gunfire throughout the siege. At 12:07 p.m., the Davidians set simultaneous fires at three or more locations within the compound. This was established by teams of independent arson experts and fire development analysis experts; from electronic surveillance overhears; by video taken from an aircraft; by observations of FBI agents; and by admissions of Davidian survivors. The fires rapidly engulfed the compound in flames and smoke.

The remains of approximately 75 individuals (50 adults and 25 children under age 15) were retrieved from the ruins of the compound. At least 17 of these individuals, including several children, died of gunshot wounds and one child had been stabbed to death. In addition to the 75 persons whose deaths occurred during the April 19 fire, five other bodies, all with gunshot wounds, were also recovered. Those five bodies were of the Davidians presumably killed during the February 28 shootout with the BATF. Some of those five bodies showed evidence of having been shot from inside the compound and at least one of the five showed evidence of suicide. The autopsies revealed that no one was harmed by the tear gas or had toxic levels of any component of tear gas in their systems.

Nine Davidians survived the fire. One of them was a woman who emerged from the compound, saw the FBI vehicles, then ran back into the blazing compound. An HRT agent risked his life by leaving his armored vehicle, running into the flames, and

saving the woman who apparently did not want to be saved. She fought the agent even as he was rescuing her.

Also while the fires were burning and the ammunition exploding, another group of HRT agents risked their lives by entering the tunnels in the compound to search for survivors, especially children. The agents waded into waist-deep water filled with human waste, infested with rats, and containing human remains, and travelled through a tunnel to a buried school bus which contained cool, clean air, but none of the children as we had hoped.

THE VALUABLE LESSONS OF WACO

The events that transpired on the Branch Davidian compound near Waco, Texas presented some of the most difficult and dangerous situations ever faced by American law enforcement. The men and women of the FBI tried valiantly to bring the siege to a peaceful end and acted heroically to save others during the fire. The FBI strongly believes that, in the context of the moment and with the information available, each decision and each action was predicated on our best overall assessment, based on our collective experience, of the situation with which we were faced. FBI agents, however, are only human. But each agent was striving to do his or her best and was motivated by a sincere desire to save lives and to end the standoff peacefully. The FBI believes, most importantly, that the tragic loss of life at Waco

was pre-destined by David Koresh and that he alone determined the ultimate outcome.

With each law enforcement operation, however, the FBI organization continues to learn and to grow. Fortunately, the FBI does not confront the violent and dangerous Waco-style barricade situations on a daily basis; as a result, the opportunity to study and learn from these situations only arises as often as do the events. While we lament the horrific deaths which occurred in Waco, it would be equally tragic if we did not learn from Waco. As discussed below, the FBI did, in fact, learn many valuable lessons from its encounter with David Koresh and the Branch Davidians, lessons which will serve the FBI well in the future.

Furthermore, former Deputy Attorney General Philip B. Heymann made a number of recommendations after the exhaustive review of Waco by the Department of Justice. All of the recommendations pertaining to the FBI, which are set forth in his report dated October 8, 1993, have been adopted and are being implemented. The FBI has improved three facets of its operations in response to its experiences in Waco: (1) jurisdictional issues are being clarified; (2) crisis response operations have been reorganized and expanded, including the availability and use of outside experts; and, (3) research efforts have been enhanced.

JURISDICTION

Memoranda of Understanding

The FBI has negotiated or is seeking to negotiate Memoranda of Understanding (MOUs) with other federal law enforcement agencies to establish in advance responsibility for, as well as command and control of, hostage/barricade situations where FBI resources are or may be deployed. These MOUs will facilitate a smoother transition between agencies when the HRT is deployed. An MOU with the Bureau of Prisons has been finalized and MOU negotiations are underway with the Drug Enforcement Agency. The FBI has also had discussions with BATF and other federal law enforcement agencies regarding jurisdiction in crisis situations. The MOUs will seek to clarify when the FBI is in control and eliminate any last minute negotiations between agencies as to which agency is in command of the situation.

In addition, President Clinton has directed that the FBI have lead responsibility for operational response to any terrorist incident that takes place within the United States. This will ensure that valuable time is not lost as agencies discuss command and control issues in the face of a crisis.

OPERATIONS

Creation of CIRG

In April 1994, FBI Director Freeh reorganized the FBI's crisis response resources into a single entity, the Critical Incident Response Group (CIRG). An organization chart is

attached. The CIRG operates under the leadership of an FBI executive who reports directly to the Director and who is experienced in crisis management issues. The CIRG will respond to hostage-taking and barricade situations as they arise. Through the creation of the CIRG, the FBI will have immediate access to a much broader range of law enforcement tools to resolve these dangerous situations as quickly and as peacefully as possible.

The CIRG brings together under unified command numerous aspects of the crisis response resources, such as on-site crisis managers, the tactical resources of the HRT, an expanded complement of hostage negotiators, the SWAT Training Unit, and the FBI's behavioral scientists. Most importantly, by design, the CIRG balances the input of the negotiating and tactical personnel, placing them on equal footing.

1. On-Site Crisis Managers

The CIRG is responsible for the selection and training of "crisis managers" to serve as on-site commanders during hostage/barricade situations or other significant crises. Over half of the FBI's Special Agents in Charge (SACs), as well as the Attorney General, have received specialized crisis management training to date. This cadre of SACs will assist in any major hostage/barricade situation or other crisis requiring the services of the HRT or other FBI resources. The Director will designate the on-site commander on a case-by-case basis, as was

successfully done in the Oklahoma City bombing. Several of the specially-trained SACs will be dispatched to each crisis to enable them to staff the command post 24 hours a day and to prevent fatigue of any particular SAC.

2. Increases in the Size and Equipment of the HRT

With the support of Congress, the FBI is increasing the size of the HRT to allow it to address more than one major crisis at a time. Increasing the HRT will allow for replacement and/or rotation of fatigued personnel during a long-term crisis.

When fully staffed, the HRT will have 94 members, including 71 operators (assaulters and sniper-observers). The remaining 23 members will consist of management and personnel involved in communications, intelligence and training. At present, the HRT has 50 operators and 19 other personnel. The HRT is presently in the process of selecting and training additional operators. During the Waco confrontation, HRT had 46 operators and seven management and staff. As discussed below, a new, regional SWAT organization is also in place which will augment the HRT as needed.

3. Increases in the Number of Negotiators

The negotiating component of the CIRG has been increased from two to five negotiators. Additionally, 40 other specially trained hostage negotiators, located throughout the

United States, who form the Critical Incident Negotiations Team (CINT), are available for rapid deployment.

During the standoff at Waco, the FBI also learned that its negotiators and tactical operators believed at times they were working at cross purposes. Therefore, in addition to increasing its negotiating capacity, the FBI has further emphasized cross-training of tactical and negotiating components and placed both on equal footing in the new crisis management structure.

4. Standardization of SWAT Training and Equipment

Nine enhanced Special Weapons and Tactics (SWAT) teams comprised of approximately 355 Special Agents are strategically placed throughout the country. Approximately 650 Special Agents are members of SWAT in the remaining 47 field offices. The enhanced teams have had their equipment upgraded and their mandated training increased to three days per month.

In addition, the CIRG has placed the SWAT Training Unit under the direct supervision of the HRT Commander. The enhanced SWAT teams participate in joint training with the HRT to foster cooperation and ensure familiarity of personnel and tactics. The training includes staged hostage/barricade situations in which both HRT and SWAT teams are deployed. Since this training was instituted, the HRT has been deployed on several occasions and successfully used SWAT teams to assist in the crises. The HRT

Commander and the SWAT team leaders report that outstanding dialogue has been maintained.

RESEARCH

Expanded Pool of Outside Experts

When crisis situations such as the Waco standoff arise, the FBI must have immediate access to a large pool of outside experts for consultation. The CIRG is in the process of developing relationships with a network of specialists in behavioral sciences and many other disciplines so that in future crises, the FBI will have the immediate benefit of consulting with a greatly expanded variety of outside experts who are not assembled on an ad hoc basis, as was done in Waco.

The SAC, CIRG has initiated contacts with Michigan State and George Mason Universities. Both schools have developed crisis incident or crisis response programs and address the same issues law enforcement faces in crisis situations.

HOBAS Database

The CIRG is developing a hostage/barricade data system (HOBAS) to assist law enforcement crisis negotiators and commanders during crisis operations. HOBAS will be a collection of empirical and statistical data regarding previous hostage/barricade situations. CIRG personnel have travelled to other countries to consult, obtain, and share information on hostage/barricade situations with foreign law enforcement

officials. Software has been developed for the HOBAS system and data obtained from responses to questionnaires sent to law enforcement agencies is presently being loaded into the system.

Less Than Lethal Weapons Research

Since 1986, the FBI has been involved in the DOJ's quest for alternatives to the use of deadly force. This technology search has evolved into the current "Less Than Lethal Weapons" (LTLW) Program. The SWAT Training Unit, now a component of CIRG, has participated in a number of research efforts during the past two years and has created a working LTLW Committee to review various avenues of research and development of LTLW technology. The LTLW Committee is keeping abreast of both classified and unclassified research and development in this area through liaison with the military, national laboratories, federal law enforcement, private industry, and other involved entities. Research encompasses the full spectrum of relevant technologies including mechanical/impact, electrical, chemical, and biomedical, all designed to safely subdue dangerous subjects without resorting to the application of traditional weapons.

In addition to the above changes in jurisdiction, operations, and research, the Attorney General, the FBI Director, a large number of SACs, all FBI profilers, and an FBI Agent from every field office are all receiving or have received crisis management training, including behavioral science expert

training, to become familiar with CIRG, its components, capabilities and procedures.

These and other changes have improved our crisis response capabilities and have maximized the likelihood that the FBI will be better prepared to resolve future crisis situations successfully.

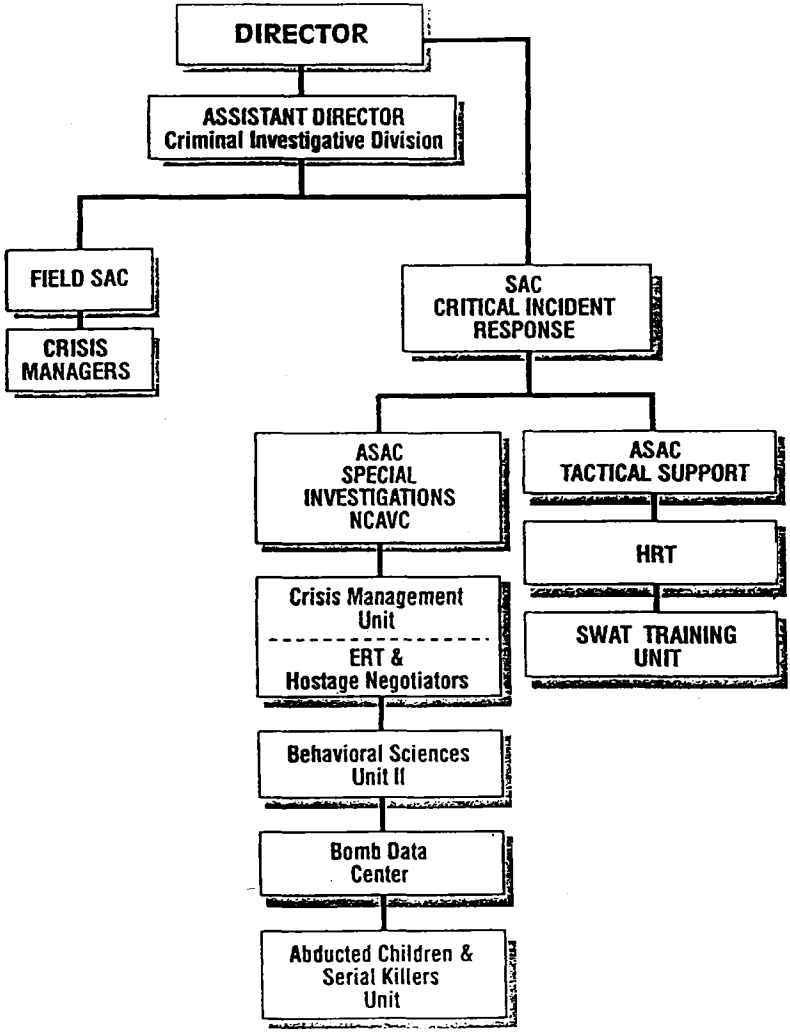
CONCLUSION

When the FBI arrived in Waco on February 28, 1993, it assumed the responsibility to restore order where law enforcement officers had been killed and laws broken. It is always the goal of the FBI, as it was in Waco, to ensure that law and order prevail over the criminal element which threatens our civilization on a daily basis. Even when faced with hundreds of high-powered weapons, many of which were automatic, and massive amounts of ammunition, the FBI personnel acted with incredible professionalism, skill and restraint, never firing a single shot even when barraged with gunfire from the compound. I am immensely proud of all the FBI personnel who worked so conscientiously for so long to bring peace and justice to Waco. Sadly, the FBI's dedicated efforts to restore peace and secure the surrender of those barricaded inside the Branch Davidian Compound did not end as everyone in the FBI had hoped. It should be noted that 35 Branch Davidians, including 21 children, were successfully removed from the compound during the 51-day siege, with an additional nine exiting on April 19, 1993. Our goal at

all times was to safely remove all of the compound residents without further loss of life on either side. Ultimately, David Koresh insisted on the dramatic and wholly unnecessary violent deaths of his remaining followers.

In the aftermath, Waco has served to teach federal law enforcement how better to deal with the future David Koresh's of this world who create these dangerous situations with no regard for human life. The FBI learned valuable lessons in Waco and, undoubtedly, will continue to learn from FBI operations in the future. We do not shy away from this challenge.

CRISIS MANAGEMENT



Mr. ZELIFF. Anybody else? OK. The joint oversight committees on Waco stand recessed until 8:30 tomorrow morning in the other hearing room, next door.

[Whereupon, at 1:48 p.m., the subcommittees adjourned.]

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